

EXHIBIT B

In the Matter Of:

In Re - Celsius Network LLC

OREN BLONSTEIN

November 22, 2022



1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3

4 In re)
5 CELSIUS NETWORK LLC,)
et al.,) Case No.
6 Debtor.) 22-10964 (MG)
7)

8

9

10 ** CONFIDENTIAL **
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13 VIDEO RECORDED EXAMINATION OF
14 OREN BLONSTEIN

15
16 TAKEN ON

17 TUESDAY, NOVEMBER 22, 2022
18

19

20

21

22

CERTIFIED STENOGRAPHER:

23 JESSIE WAACK, RDR, CRR, CCRR, NYRCR, NYACR,
CCR-NJ (No. 30XI008238700) CSR-TX (No. 11958)
24 CCR-WA (No. 21007264), CSR-CA (No. 14420),
REALTIME SYSTEMS ADMINISTRATOR
25 JOB NO.: 872582

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2 VIDEO RECORDED EXAMINATION of OREN
3 BLONSTEIN, taken before JESSICA R. WAACK,
4 Registered Professional Reporter, Registered
5 Merit Reporter, Certified Realtime Reporter,
6 Registered Diplomate Reporter, California
7 Certified Realtime Reporter, New Jersey
8 Certified Court Reporter (License No.
9 30XI008238700); Texas Certified Shorthand
10 Reporter (License No. 11958); Washington
11 State Certified Court Reporter (License No.
12 21007264); California Certified Shorthand
13 Reporter (License No. 14420); New York
14 Association Certified Reporter, New York
15 Realtime Court Reporter and Notary Public of
16 Washington, D.C. and the States of New York,
17 Pennsylvania, Delaware, Maryland and
18 Virginia, at Kirkland & Ellis, LLP, 601
19 Lexington Avenue, New York, New York, on
20 Tuesday, November 22, 2022, commencing at
21 9:51 a.m. and concluding at 7:04 p.m.

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25

3

1 A P P E A R A N C E S

2

3 ON BEHALF OF THE DEBTORS:

4 KIRKLAND & ELLIS LLP

5 BY: GRACE C. BRIER, ESQ.

6 BY: JOSEPH D'ANTONIO, ESQ.

7 BY: ELIZABETH JONES, ESQ.

8 BY: T.J. McCARRICK, ESQ.

9 BY: AMILA GOLIC, ESQ. (Remotely)

10 BY: GABRIELA ZAMFIR HENSLEY, ESQ.

11 (Remotely)

12 BY: JOSHUA RAPHAEL, ESQ. (Remotely)

13 BY: DANIEL LATONA, ESQ. (Remotely)

14 BY: ASHTON WILLIAMS, ESQ. (Remotely)

15 1301 Pennsylvania Avenue, N.W.

16 Washington, D.C. 20004

17 PHONE: 202-389-5082

18 EMAIL: Grace.brier@kirkland.com

19

20

21

22

23

24

25

4

1 A P P E A R A N C E S

2

3 REMOTELY ON BEHALF OF AD HOC GROUP OF CUSTODY

4 HOLDERS:

5 TOGUT, SEGAL & SEGAL LLP

6 BY: JARED C. BORRIELLO, ESQ.

7 One Pennsylvania Plaza, Suite 3335

8 New York, New York 10119

9 PHONE: 212-201-6571

10 EMAIL: Jborriello@teamtogut.com

11

12 ON BEHALF OF THE OFFICIAL COMMITTEE OF

13 UNSECURED CREDITORS:

14 WHITE & CASE LLP

15 BY: AARON COLODNY, ESQ.

16 BY: MICHAEL A. JAOUDE, ESQ.

17 BY: KEITH H. WOFFORD, ESQ. (Remotely)

18 BY: ANDREA AMULIC, ESQ. (Remotely)

19 BY: DAVID TURETSKY, ESQ. (Remotely)

20 BY: SAMUEL HERSHY, ESQ. (Remotely)

21 555 South Flower Street, Suite 2700

22 Los Angeles, California 90071-2433

23 PHONE: 213-620-7706

24 EMAIL: Acolodny@whitecase.com

5

1 A P P E A R A N C E S

2

3 REMOTELY ON BEHALF OF CELSIUS NETWORK:

4 AKIN GUMP STRAUSS HAUER & FELD LLP

5 BY: MITCHELL P. HURLEY, ESQ.

6 BY: JESSICA MANNON, ESQ.

7 One Bryant Park

8 Bank of America Tower

9 New York, New York 10036-6745

10 PHONE: 212-872-1011

11 EMAIL: Mhurley@akingump.com

12

13 ON BEHALF OF THE OFFICE OF THE UNITED STATES

14 TRUSTEE:

15 BY: SHARA CORNELL, ESQ.

16 BY: MARK BRUH, ESQ. (Remotely)

17 201 Varick Street

18 New York, New York 10014

19 EMAIL: Shara.cornell@usdoj.gov

20

21

22

23

24

25

6

1 A P P E A R A N C E S

2

3 REMOTELY AS SPECIAL COUNSEL TO THE DEBTOR:

4 LATHAM & WATKINS LLP

5 BY: JACK MITCHELL MCNEILY, ESQ.

6 330 North Wabash Avenue, Suite 2800

7 Chicago, Illinois 60611

8 PHONE: 312-876-6520

9 EMAIL: Jack.mcneily@lw.com

10

11 ON BEHALF OF THE SERIES B PREFERRED HOLDERS:

12 MILBANK

13 BY: MELANIE WESTOVER YANEZ, ESQ.

14 1850 K Street, NW, Suite 1100

15 Washington, DC 20006

16 PHONE: 202-835-7560

17 EMAIL: Mwyanez@milbank.com

18

19

20

21

22

23

24

25

7

1 A P P E A R A N C E S

2

3 REMOTELY ON BEHALF OF THE TEXAS STATE
4 SECURITY BOARD AND THE TEXAS DEPARTMENT OF
5 BANKING:

6 TEXAS OFFICE OF ATTORNEY GENERAL

7 BY: LAYLA MILLIGAN, ESQ.

8 BY: ROMA N. DESAI, ESQ.

9 BY: ABIGAIL RYAN, ESQ.

10 300 West 15th Street

11 Austin, Texas 78701

12 PHONE: 512-463-2100

13

14 REMOTELY ON BEHALF OF THE NATIONAL
15 ASSOCIATION OF ATTORNEY GENERALS:

16 BANKRUPTCY AND STATE DEFENSIVE

17 LITIGATION CHIEF COUNSEL

18 BY: KAREN CORDRY, ESQ.

19 1850 M Street NW, 12th floor

20 Washington, DC 20036

21 PHONE: 202-326-6000

22

23

24

25

1 A P P E A R A N C E S

2

3 REMOTELY ON BEHALF OF THE FEDERAL TRADE

4 COMMISSION:

5 BY: KATHERINE MARIE AIZPURU, ESQ.

6 600 Pennsylvania Avenue NW

7 Washington, DC 20580

8 PHONE: 202-326-2870

9 EMAIL: Kaizpuru@tzlegal.com

10

11 REMOTELY ON BEHALF OF CREDITOR IGNAT TUGANOV:

12 VENABLE LLP

13 BY: CAROL WEINER LEVY, ESQ.

14 Rockefeller Center

15 1270 Avenue of the Americas

16 New York, New York 10020

17 PHONE: 212-503-0675

18 EMAIL: Cwlevy@Venable.com

19

20 A L S O P R E S E N T

21

22 JOSEPH GOLDING-SCHSNER, Celsius counsel

23 KEVIN-SCOTT VAN VLIGMEN, videographer

24 CAMERON CREWS, pro se creditor

25

9

1 A L S O P R E S E N T

2 (remotely)

3

4 JUAN TORRES, Zoom tech

5 AYDALINE GARCIA, Zoom tech

6 DAVID ADLER, did not provide appearance

7 MICHAEL MORRIS, did not provide appearance

8 CEZARY BORODZIUK, did not provide appearance

9 DEB KOVSKY, did not provide appearance

10 BRYAN KOTLIAR, did not provide appearance

11

12

13

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1 A L S O P R E S E N T

2 (pro se creditors - remotely)

3

4 JARNO ÖBERG

5 IMMANUEL HERMANN

6 VICTOR UBIERNA DE LAS HERAS

7 JEREMY COHEN HOFFIG

8 JARED BORRIELLO

9 KULPREET KHANUJA

10 DAVID SCHNEIDER

11 GREGORY A. KIESER

12 DANIEL FRISHBERG

13 CHRIS KOENIG

14

15 --oo--

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17

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2 WITNESS: OREN BLONSTEIN

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** All exhibits were attached to the
original transcript **

--909--

13

1 * * * * *

2 PROCEEDINGS

3 November 22, 2022, 9:51 a.m.

4 New York, New York

5 * * * * *

6 THE VIDEOGRAPHER: Good morning,

7 everyone. We are now on the record.

8 My name is Kevin-Scott van Vlijmen.

9 I'm the videographer retained by

10 Lexitas.

11 This is a video deposition for
12 the United States Bankruptcy Court,
13 Southern District of New York.

14 Today's date is November 22 of
15 2022, and the video time is 9:51 a.m.

16 This deposition is being held
17 both remotely via Zoom as well as in
18 person at Kirkland & Ellis LLP, at
19 601 Lexington Avenue, New York,
20 New York, 10022, in the matter of In
21 Re: Celsius Network LLC, et al., Case
22 No. 22-10964 (MG).

23 The deponent is Oren Blonstein.

24 All counsel will be noted on the
25 stenographic record.

14

1 Our court reporter is Jessica
2 Waack and will now swear in the
3 witness.

4 *****

5 OREN BLONSTEIN, sworn
6 on oath and/or affirmed, called as a
7 witness herein, was examined and testified
8 as follows:

9 *****

10 THE VIDEOGRAPHER: You may
11 proceed.

12 MS. BRIER: At the outset, I'm
13 just going to designate this transcript
14 as confidential -- the entire
15 transcript as confidential.

16 ZOOM PARTICIPANT: On Zoom, you
17 can't [inaudible] do that?

18 MS. BRIER: You can't hear us?

19 THE STENOGRAPHER: I think
20 someone just wasn't muted.

21 ZOOM PARTICIPANT: You are
22 currently muted.

23 THE STENOGRAPHER: Can we go off
24 the record?

25 THE VIDEOGRAPHER: Yes. All

15

1 right.

2 The time is currently 9:53 a.m.

3 And we are going off the record for

4 Media Unit No. 1.

5 (Whereupon, a recess was taken at

6 9:53 a.m.)

7 THE VIDEOGRAPHER: All right.

8 The time is currently 9:53 a.m. And
9 we're back on the record for Media Unit
10 No. 1.

11 MS. BRIER: At the outset, I am
12 going to designate the entire
13 transcript as confidential under the
14 terms of the protective order.

15 No information discussed during
16 this deposition may be recorded or
17 publicly disclosed whether orally, on
18 Twitter, on podcasts or any other
19 means.

20 At this point, the only
21 individuals who should be on this
22 deposition, or entities and agencies,
23 are those who have provided prior
24 notice that they would attend or
25 participate in the deposition and those

16

1 that are bound by the terms of the
2 protective order.

3 So if you don't meet that
4 description, please sign off. We don't
5 want to have any issues with folks
6 livestreaming or Tweeting thoughts or
7 commentary on what's going on today who
8 hasn't agreed to the protective order.

9 And as before, we're happy to
10 meet and confer with folks after this
11 about de-designating portions of this.
12 But just to protect confidential
13 information for purposes of today,
14 we're designating the transcript as
15 confidential.

16 MR. COLODNY: All right.

17 MS. BRIER: Go ahead.

18 EXAMINATION

19 BY MR. COLODNY:

20 Q. Mr. Blonstein, my name is Aaron
21 Colodny. I'm a partner at White & Case. I
22 represent the Official Committee of
23 Unsecured Creditors in these cases.

24 Can you please introduce
25 yourself, again, for the record?

17

1 A. Sure. My name is Oren Blonstein.

2 I work at Celsius Network. Head of
3 innovation and chief compliance officer.

4 Q. Thank you.

5 So I'm going to ask you a series
6 of questions today. If you don't
7 understand the question that I ask you,
8 please let me know.

9 A. Sure.

10 Q. I'll try to restate it.

11 If you don't ask me for any
12 clarification, I'll assume that you
13 understand the question that I'm asking.

14 You've taken an oath today.

15 That's the same oath that you're going to
16 take in a courtroom. You understand that
17 everything that you say today is going to
18 be true and correct to the best of your
19 knowledge?

20 A. Yes.

21 Q. Is there any reason you can't
22 testify truthfully today?

23 A. No.

24 Q. Have you taken any medications or
25 other substances that would affect your

18

1 ability to testify truthfully?

2 A. No.

3 Q. Thank you.

4 We have a court reporter here
5 today. She's got the hardest job in the
6 room. And so I would ask that we try not
7 to talk over each other.

8 Sometimes I speak too fast. I
9 know that's something people do, you know,
10 but it is best to slow it down. And if she
11 asks you to restate something, just say it
12 again in the best -- best words you can.

13 And then the last ground rule for
14 that is answer verbally. You know, no
15 "uh-huhs" or --

16 A. No nodding.

17 Q. -- no nodding, just yeses and
18 nos.

19 And then your counsel may lodge
20 objections to my questions. As a general
21 matter, that's to make her objection on the
22 record. I'll give her time and ask her if
23 she's going to instruct you not to answer
24 the question.

25 Unless she instructs you not to

19

1 answer the question, you're supposed to
2 answer everything that I ask you today.

3 And then the last thing is, you
4 know, we can take as many breaks as you
5 want. If you're getting tired, if you want
6 to get a drink, just let me know. I just
7 ask if there's a question pending, we just
8 not take a break during a pending question.

9 A. Understood.

10 Q. Thanks.

11 Have you ever been deposed
12 before?

13 A. No.

14 Q. First time for everything, I
15 guess.

16 MR. COLODNY: Can I get one.

17 (Whereupon, Exhibit 4 is marked
18 for identification.)

19 MR. COLODNY: Let's start with
20 exhibit -- can I get one for the court
21 reporter.

22 Let's start with Exhibit 4.

23 BY MR. COLODNY:

24 Q. Have you seen this document
25 before?

20

1 A. Could you just give me one minute
2 to review it?

3 (Pause for reading/reviewing.)

4 A. Yes.

5 Q. What is this document?

6 A. It's a -- me attesting to the --
7 to the ownership of the assets in the
8 program.

9 Q. It's a notice of your deposition
10 today, why we're all here today.

11 A. Okay.

12 Q. And do you understand that you're
13 here today in your personal capacity, or
14 are you here as a representative of
15 Celsius?

16 A. I'm sorry. Can you restate that?

17 Q. Are you here in your personal
18 capacity or as a representative of Celsius?

19 MS. BRIER: Object to form.

20 THE WITNESS: Yeah, I don't think
21 I understand the -- I mean, in my
22 personal capacity --

23 BY MR. COLODNY:

24 Q. Are you testifying as Oren
25 Blonstein, or are you testifying as the

21

1 chief compliance officer for Celsius?

2 MS. BRIER: Same objection.

3 You can answer.

4 THE WITNESS: Yeah, I think both.

5 BY MR. COLODNY:

6 Q. Okay. Did you prepare for
7 today's deposition?

8 A. I did.

9 Q. How did you prepare?

10 A. Meeting with legal advisors.

11 Q. Who did you meet with?

12 A. Grace, Joseph. Yeah, Grace and
13 Joseph. I think there may have been some
14 other people on the call, but I don't
15 remember.

16 Q. Okay. How long did you prepare
17 for?

18 A. Two hours -- about two hours.

19 Q. And when was that?

20 A. Yesterday.

21 Q. And did you look at any documents
22 in connection with that preparation?

23 A. I -- mostly just reviewing the
24 declaration -- the previous declarations.

25 Q. That was your declaration?

22

1 A. Yes, that's right.

2 Q. And was it just the declaration
3 submitted in connection with this dispute?

4 A. Yes. And just -- I mean, I also
5 reviewed the Mashinsky -- I mean, I tried
6 to review the 1100 pages of the Mashinsky
7 declaration. But I reviewed a lot of them.

8 Q. The terms of use where
9 Mr. Mashinsky certified that all the terms
10 were correct?

11 A. Exactly, exactly.

12 Q. Okay. Any other documents that
13 you looked at during that prep?

14 MS. BRIER: Object to form.

15 THE WITNESS: I -- all of the
16 documents that were -- I mean, pretty
17 much everything document that was
18 referenced in that declaration -- in my
19 declaration, I reviewed.

20 BY MR. COLODNY:

21 Q. Okay. Any other documents?

22 MS. BRIER: Same objection.

23 THE WITNESS: Yeah, I don't --
24 yeah, I mean, none that stand out.

25 ///

23

1 BY MR. COLODNY:

2 Q. Did you take any notes of that
3 preparation session?

4 A. No, no.

5 MR. COLODNY: Could I get 4.

6 (Whereupon, Exhibit 5 is marked
7 for identification.)

8 BY MR. COLODNY:

9 Q. Have you seen this document
10 before?

11 A. Yeah. Can I have just one -- a
12 couple minutes to review it --

13 Q. Uh-huh.

14 A. -- to make sure?

15 (Pause for reading/reviewing.)

16 MS. CORNELL: Can you announce
17 what the document is when you hand over
18 the exhibit, please?

19 MR. COLODNY: Yeah. This is the
20 written deposition questions that
21 were submitted by the Official
22 Committee of Unsecured Creditors.

23 MS. CORNELL: Just so I can...

24 Thank you.

25 THE WITNESS: Yes, I have seen

24

1 this.

2 BY MR. COLODNY:

3 Q. When did you see it?

4 A. Last week. Early last week.

5 Q. And did you review in preparation
6 for today's deposition?

7 A. Not this one. The answers.

8 Q. Okay.

9 A. The version with the answers.

10 MS. BRIER: And, Aaron, for
11 purposes of the deposition, what are
12 you marking this deposition -- what are
13 you marking this exhibit?

14 MR. COLODNY: Exhibit 5.

15 MS. BRIER: 5.

16 BY MR. COLODNY:

17 Q. Did you have any role in
18 answering these questions?

19 A. Yes.

20 Q. What was your role in answering
21 these questions?

22 A. I was one of the -- one of the
23 people involved in answering the questions.
24 I mean, I had -- I had some knowledge about
25 the answers to the questions.

25

1 Q. Okay. I suppose someone -- I'm
2 trying to figure out a good way to ask this
3 without asking what your counsel talked to
4 you about.

5 Did you look at any documents to
6 help provide answers to your counsel in
7 connection with finding the answers to
8 those questions?

9 A. Because we've been reviewing so
10 many of the related documents, they were
11 kind of -- they were relatively fresh in my
12 mind. So I think for answering these
13 questions, I don't -- I don't think I was
14 reviewing any documents at the time.

15 Q. Okay. And you provided
16 information responsive to these questions
17 prior to the responses being filed on the
18 docket?

19 MS. BRIER: Object to form.

20 THE WITNESS: Yeah, I --

21 BY MR. COLODNY:

22 Q. I'll clarify.

23 Did you provide answers to these
24 questions before the formal responses were
25 submitted to the Court?

26

1 A. I mean, just in terms of
2 logistics, just to make sure I understand
3 this, I mean, we did -- you know, we talked
4 about the answers.

5 And they were -- so, yeah, they
6 could have been submitted if we didn't do
7 it before.

8 Q. Okay. Is there...

9 MR. COLODNY: I'll get 5 now.

10 And this is the responses that were
11 submitted by Celsius to those
12 questions.

13 (Whereupon, Exhibit 6 is marked
14 for identification.)

15 MS. BRIER: And what's the
16 exhibit number?

17 MR. COLODNY: Exhibit 6.

18 BY MR. COLODNY:

19 Q. Have you seen this document
20 before?

21 A. Yes, I have.

22 Q. Are there particular questions in
23 here that you were in charge of answering?

24 MS. BRIER: Objection to form.

25 And to the extent you can answer

27

1 without getting into conversations with
2 counsel, go ahead and answer.

3 THE WITNESS: Yeah, every single
4 one of these was with counsel involved;
5 so...

6 BY MR. COLODNY:

7 Q. Are there questions in here where
8 you believe you're not prepared to answer
9 today?

10 A. I believe --

11 MS. BRIER: Objection to form.

12 THE WITNESS: Should I continue?

13 MS. BRIER: Yeah, you can answer.

14 THE WITNESS: Okay. Good.

15 Yeah, I believe that there are
16 some questions that were objected to,
17 so, yeah, those I did not -- I'm not as
18 familiar with those.

19 BY MR. COLODNY:

20 Q. Okay.

21 A. I mean, I don't have those as
22 fresh in my head as I do the ones where we
23 answered them.

24 Q. Okay. But you didn't prepare to
25 answer the ones that were objected to?

28

1 A. I -- no.

2 Q. Do you believe -- is there
3 anything in these questions that you
4 believe is not accurate, as the answers to
5 the questions?

6 A. Everything should be accurate, to
7 the best of my knowledge.

8 Q. I want to talk a little bit about
9 your background and get to know you a
10 little bit.

11 A. Yeah. Sure.

12 Q. Where did you work before
13 Celsius?

14 A. So immediately before Celsius, I
15 was an advisor at Ava Labs. I was actually
16 spinning out a company there. And then --
17 yeah.

18 Q. What is Ava Labs?

19 A. Ava Labs is a layer one
20 blockchain, so kind of like a Ethereum or
21 Bitcoin. There's the Avalanche blockchain.

22 Q. What was your role at Ava Labs?

23 A. I was -- I was the -- I was
24 basically helping them to productize a new
25 technology and spin it out as the CEO.

29

1 Q. Spin it out. You were going to
2 be the CEO of the new company?

3 A. Yeah. I mean, I was -- a month
4 before I joined Celsius.

5 Q. Okay. Where did you work before
6 Ava Labs?

7 A. I worked for -- immediately
8 before, I was doing consulting for a number
9 of different FinTec and crypto companies.
10 One of them was -- probably the best known
11 one was CrossTower --

12 Q. Uh-huh.

13 A. -- cryptocurrency exchange.

14 Q. How long have you been working in
15 the crypto space?

16 A. Since 2016. 2016 I was working
17 at a company called TORA Trading Services
18 that launched a joint venture called
19 Caspian.

20 And -- yeah. But that -- you
21 know, I was not full-time in crypto. We
22 had basically a traditional financial
23 services product offering and a crypto
24 offering.

25 Q. So prior to working in crypto,

30

1 you were working in traditional finance?

2 A. Yeah, that's right. For 12
3 years.

4 Q. And what were your -- what was
5 your general area of expertise in
6 traditional finance?

7 A. Primarily product development,
8 general operations, things like that.

9 Q. So would you consider yourself to
10 be a product manager?

11 A. I was head of product management.
12 I was head of production support. I was
13 head of -- I was kind of a regional head
14 for different offices that we opened.

15 Q. So let's turn to Celsius.

16 When did you first hear about
17 Celsius?

18 A. When I was at Huobi in 2019.

19 Q. And how did you first hear about
20 it?

21 A. It was like the literal kind of
22 watercooler moment. So some -- some guys
23 that were working at -- at Huobi U.S.,
24 where I worked, we were just kind of
25 chatting about what we do with our -- what

31

1 do you do with your crypto.

2 And there was a guy that said,
3 oh, I put my money in Celsius. I put mine
4 in NEXO. Some other people were kind of
5 chiming in with their different -- what
6 they do with their crypto.

7 And that was when I heard of
8 Celsius, and, you know -- and his -- his
9 comment was, like, it's not -- you're
10 taking some risk by putting it there, but,
11 hey, it's 12 percent on the dollar, on
12 stable coins. And, you know, great
13 interest rate on other crypto; so...

14 Q. And how did you go from
15 watercooler moment, when you first heard
16 about Celsius, to working at Celsius?

17 A. Yeah. So that was -- the
18 watercooler was like around, you know,
19 sometime 2019 -- let's say early 2019. I
20 left Huobi in December of 2019.

21 In the fall of 2019, I started to
22 get personally, like, very active in DeFi,
23 experimenting with protocols. And in early
24 2020, I had -- actually, in late 20- -- in
25 December 2019, I had my first kid. Didn't

32

1 have time to play around with DeFi anymore,
2 so I decided to use Celsius as a kind of
3 alternative.

4 So I became a Celsius customer in
5 the spring of 2020.

6 Q. When you say a "Celsius
7 customer," you were a customer of the earn
8 program?

9 A. Yeah, that's right.

10 Q. In December of 2020?

11 A. I think -- I think I actually
12 joined in the spring of 2020, yeah. So I
13 was a customer for a while, watched the
14 AMAs, you know, did my own research.

15 Because I'm in the industry.

16 Like, one of the -- one of the things that
17 we do -- like a lot of the people in the
18 industry do, you know, you see what's on
19 the website, but you look at terms of use
20 to see what is actually going on.

21 So I looked at the terms of use,
22 you know, saw that I was kind of
23 relinquishing title to my coins which, you
24 know, made me pause. But, ultimately, I
25 decided it was -- it was a good decision.

33

1 Yeah, and signed up as a customer. And
2 then -- yeah, I should actually just pause
3 there.

4 Q. And -- so when I think of spring
5 of 2020, is this -- I guess there's a
6 distinction because the terms of use were
7 changed in the spring of 2020.

8 Were you a customer and look at
9 this before March or after March?

10 A. That's a -- yeah, I can't
11 remember. Like, at the time I was -- you
12 know, I was not working at the company. I
13 wasn't focused on what version of the terms
14 of use. So I don't remember at the time
15 whether I -- you know, which version I was
16 looking at.

17 Q. And that's because when you sign
18 up for the first time, you're looking at
19 the terms of use for the first time. You
20 wouldn't know --

21 (Simultaneous unreportable
22 crosstalk occurs among parties.)
23 (Stenographer requests one
24 speaker at a time.)

25 ///

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1 BY MR. COLODNY:

2 Q. So I can repeat the question.

3 You -- you said you didn't know
4 which version of the terms, and that's
5 because when you sign up as a customer for
6 the first time, you look at the terms of
7 use as they exist at that time and not all
8 of the previous versions?

9 MS. BRIER: Objection to form.

10 THE WITNESS: Correct. Yeah.

11 BY MR. COLODNY:

12 Q. Okay. So you're a Celsius
13 customer.

14 How do you go -- or can you
15 explain to me how you went from being a
16 Celsius customer to an employee of Celsius?

17 A. I reached out to -- so Alex was
18 running his -- the AMAs.

19 Q. And that's Alex Mashinsky?

20 A. Alex Mashinsky was running the
21 AMAs, and I was watching them. And, you
22 know, from working in the industry, I saw
23 that there was -- from working in the
24 industry and then also being a customer of
25 the platform, it appeared to me that there

35

1 were a lot of -- a lot of improvements that
2 I could make to the platform -- or that I
3 could recommend to the platform, just real
4 low-hanging fruit of things that they could
5 do to improve the offering.

6 So Alex was always talking about,
7 hey, just email me, reach out to me, tell
8 me if you have ideas.

9 So I emailed him, thinking, you
10 know, that there's no way this guy is going
11 to respond.

12 About 20 minutes later, you know,
13 he emailed me back -- I don't know if it
14 was 20 minutes, but a relatively short
15 period of time later, he emailed me back
16 and said, let's set up a call.

17 And that's when we started
18 discussing, you know, the possibility of me
19 joining the company.

20 Q. Okay. And how did those --
21 what -- what did you and Alex talk about?

22 A. He just talked about the
23 different kinds of initiatives that were
24 going on, the growth of the company and
25 what they were looking for in new hires.

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1 And then it was a relatively
2 short discussion, and then it led to me
3 meeting with other staff at Celsius.

4 Q. And did you submit a résumé to
5 them?

6 A. I must have, but I don't -- yeah,
7 I don't remember. I can't tell you for
8 sure, but I think I would have.

9 Q. That's okay.

10 And did you have a formal
11 interview process with Celsius?

12 A. I met with a few people there,
13 yeah. I mean, a lot of interviews in
14 crypto can be somewhat unstructured. But,
15 yeah, I met with -- yeah, I met with a
16 global -- Trunshedda, the -- Trunshedda
17 Ramos, the head of HR. I met with, yeah, a
18 number of other people there.

19 Q. And what was your -- when were
20 you hired by Celsius?

21 A. I started in February of 2021.

22 Q. And what was your first position?

23 A. Head of innovation.

24 Q. And this is one I'm interested
25 in -- very interested in. What does the

37

1 head of innovation do?

2 A. Yeah. Kind of the concept was
3 that there were a ton of initiatives -- a
4 lot of ideas, and the idea was to work
5 with, you know, stakeholders inside the
6 company and then people outside the company
7 to figure out what the company's -- to
8 basically help distill the company's
9 strategy into action.

10 So maybe a one-sentence summary
11 would be that we were supposed to help
12 figure out what the company was going to do
13 next and do whatever we needed to do to
14 make it happen.

15 Q. And what -- what were your, like,
16 typical day job?

17 What -- like, I get the concept
18 that you were to talk to the customers,
19 find out what they wanted, you know, make
20 products that fit those needs.

21 What were your day-to-day kind of
22 responsibilities, operations, things --
23 tasks?

24 A. Sure.

25 MS. BRIER: Object to form.

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1 THE WITNESS: So my day-to-day
2 responsibilities were to look at the
3 list of things that we were considering
4 and help to kind of score -- develop a
5 framework for deciding, like, which
6 things we would work on.

7 You know, try to shepherd those
8 through the company's processes to
9 get -- you know, to go through approval
10 processes or...

11 And then in addition, working
12 with out -- you know, partners,
13 vendors, internal departments to figure
14 out, like, what would need to happen to
15 stand -- to get the product -- a new
16 product up and running.

17 BY MR. COLODNY:

18 Q. What internal departments would
19 you work with?

20 A. Yeah. Very often, like,
21 regulatory product, legal. We had a
22 partnerships team, kind of biz dev
23 partnerships team. It was pretty, you
24 know, wide-ranging groups.

25 Q. And what were the interactions

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1 with the legal team that you had?

2 MS. BRIER: Just to the extent
3 you can answer without getting into
4 discussions that you had with the legal
5 team, you can answer.

6 MR. COLODNY: I'm asking -- I can
7 rephrase the question.

8 MS. BRIER: Uh-huh.

9 BY MR. COLODNY:

10 Q. On a -- as a general matter, when
11 you were working with the company's legal
12 team, what was the -- what was the purpose
13 of your interaction with the legal team?

14 A. Yeah. Sure.

15 MS. BRIER: Same instruction.
16 Just don't get into specific
17 conversations with the legal team.

18 THE WITNESS: The -- you know,
19 far and away, the number one -- far and
20 away, the main kind of work that we did
21 was related to contracts with vendors
22 with the legal team.

23 BY MR. COLODNY:

24 Q. Okay. How about the regulatory
25 team?

40

1 MS. BRIER: Oren, again, to the
2 extent that you can answer without
3 getting into specifics as to legal
4 issues that you discussed with the
5 legal team, go ahead and answer.

6 THE WITNESS: Yeah, I'm thinking
7 about that.

8 Yeah, one of the things that I
9 think helped me to be qualified for
10 this -- or well qualified for this
11 role, and it was distinct from the
12 product -- the product team, product
13 world, is that, like, when I was at
14 Huobi U.S., I was the CEO and also the
15 acting CCO. At CrossTower, I was the
16 CCO and COO, I mean acting.

17 So I ended up developing a
18 fair -- like a decent understanding of
19 some of the regulatory -- of the
20 regulatory landscape -- I just want to
21 be specific here -- around things like
22 money transmission, anti-money
23 laundering and sanctions. That's where
24 I spent, like, most of my time.

25 And since most of the products

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1 that we were looking at for the
2 innovation team were new products, not
3 earned, not our loans product -- right?
4 -- not the existing product set when I
5 joined, I was -- we were looking at
6 things like the swap feature, which is
7 essentially like a trading feature, a
8 credit card.

9 You know, there's a number of
10 other -- number of other products. So
11 there are -- there are a lot of times
12 where I could get the work in this area
13 to a certain point having a good
14 understanding of, like, when we would
15 trigger certain regulatory requirements
16 or when we would need a partner who
17 had -- who had coverage without me
18 having to consult with the -- our
19 regulatory team.

20 BY MR. COLODNY:

21 Q. Okay. Who -- so who were you
22 talking to when you were talking to the
23 regulatory team?

24 A. Generally, Roni, Roni Pavon Cohen
25 [as spoken]. I forgot some of these last

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1 names. And then Yarden Noy.

2 Q. What is Yarden's last name?

3 A. Noy, N-o-y. I should know that.

4 Q. And how about the legal team?

5 A. Ron Deutsch, Joseph, Ofer,
6 Steven.

7 Q. Steven?

8 A. How do you pronounce -- yeah, his
9 last name starts with a K.

10 Q. Okay. Steven K.?

11 A. Yeah.

12 Q. And who did you report to as the
13 chief innovation officer?

14 A. Head of innovation -- as head of
15 innovation --

16 Q. Head of innovation.

17 A. -- I reported to Roni.

18 Q. Roni Pavon?

19 A. Yeah.

20 Q. And so that's when you started.

21 Did you get promoted while you've
22 been at Celsius?

23 A. In the late summer, early fall,
24 so September 2021, I was appointed the
25 chief compliance officer.

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1 Q. This is September '21?

2 A. Yep.

3 Q. And what was your role as chief
4 compliance officer?

5 A. Yeah. I do want to -- I think
6 it's good to talk about this, because I can
7 understand that to many outside parties,
8 they may look -- they may see the chief
9 compliance officer title and think of, you
10 know, a wide-ranging scope of
11 responsibilities that a CCO might have in
12 other kinds of companies.

13 Like I said before, because of my
14 experience working at crypto exchanges, my
15 primary responsibilities -- the way that
16 I -- the way I viewed my responsibilities
17 and the way that I communicated with my
18 manager was that I was going to focus
19 primarily on our obligations under the Bank
20 Secrecy Act as a money services business.

21 So, you know, compliance with the
22 BSA, compliance with sanctions laws from
23 OFAC or the sanctions rules from OFAC.
24 That was the vast -- that's what we were
25 going to focus on.

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1 Q. And you said that it was helpful
2 to clarify. What is a -- in your
3 understanding, what does a chief compliance
4 officer do that you do not do?

5 A. Yeah, I mean -- that's, like --
6 so I was interviewing my replacement as a
7 chief compliance officer right around the
8 time of the pause in withdrawals. It was
9 not -- you know, I did not intend to become
10 the chief compliance officer. That's not
11 what I wanted -- really wanted to do for
12 the company.

13 But one of the interview
14 questions that we ask is -- would ask is,
15 you know, how do you define compliance.
16 And, generally, it's like governance, risk
17 and compliance.

18 In some organizations, you'll
19 have a chief compliance officer where
20 regulatory kind of falls under their
21 umbrella. Sometimes you'll have a head of
22 regulatory. So it's pretty wide ranging
23 especially in crypto.

24 But, for example, we had a
25 designated -- a distinct regulatory team

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1 that dealt with all -- you know, pretty
2 much all regulatory matters. I'm not an
3 attorney. The extent of my regulatory
4 experience is really from the time that I
5 started working in crypto.

6 The 12 years that I spent in
7 financial services prior -- we were a
8 broker-dealer, and the company TORA Trading
9 Services was a broker-dealer.

10 We operated an ATS in Japan -- or
11 in Hong Kong. We also had some kind of
12 designation in Japan and the UK. But that
13 wasn't really, like, a main part of my job.
14 We were largely a software provider.

15 So that -- these regulatory and
16 legal matters were not really in my
17 wheelhouse, whereas I had spent the last
18 several years specifically focused on AML
19 and sanctions compliance for crypto
20 exchanges. So that was like -- that was
21 much better suited to my skills.

22 Q. So as the chief compliance
23 officer, you focused on anti-money
24 laundering and money transmission but not
25 regulatory matters generally?

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1 A. Exactly.

2 MS. BRIER: Objection to form.

3 THE WITNESS: Sorry.

4 BY MR. COLODNY:

5 Q. And who did focus on the
6 regulatory matters generally?

7 MS. BRIER: Objection to form.

8 We're starting to get a little
9 outside the scope, but go ahead.

10 MR. COLODNY: I'm just trying to
11 understand what he covered and what he
12 didn't to set the foundation for his
13 testimony later.

14 THE WITNESS: Yeah. So -- I
15 mean, you can image that -- like, if
16 someone were to go through all my
17 emails -- I'm sure lots of people have
18 or are. You know, I was probably
19 copied on many communications between
20 the legal and regulatory teams.

21 But because of my background, I'm
22 not, like, a specialist in that area.

23 You know, I wasn't necessarily the
24 person consult -- you know, like, if
25 there's a big regulatory question, no

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1 one's coming to me and saying, you
2 know, tell us the answer to this
3 question, Oren.

4 And you said who are the people
5 that primarily worked on it? That
6 would be Roni and Yarden on the
7 regulatory side.

8 BY MR. COLODNY:

9 Q. Okay.

10 A. And then I should add that we had
11 representation by outside counsel, Latham
12 and Buckley.

13 Q. And did you -- who did you report
14 to -- when you became the chief compliance
15 officer, who did you report to then?

16 A. Alex Mashinsky.

17 Q. Okay. Did you attend board
18 meetings?

19 A. Okay. So there was -- there was
20 a board meeting shortly after I became the
21 chief compliance officer where I was trying
22 to get the company's -- you know, the --
23 get some of the -- our obligations under
24 the Bank Secrecy Act taken care of, so,
25 like, the board review -- the board review

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1 our anti-money laundering policy. And, you
2 know, other -- other kind of requirements
3 based on the BSA.

4 There was a board meeting in, I
5 think, the May -- May -- sorry. Yeah, in
6 May of 2022. So I was in the building, and
7 I was in the meetings for a portion of
8 them, but not for the entire meeting.

9 And other than that, those were
10 the two main meetings of the board that I
11 participated in.

12 Q. I've seen you referred in a
13 couple documents as chief product officer.

14 Are you the chief product officer
15 as well?

16 A. I'm in the process of
17 transitioning my responsibilities as a
18 chief compliance officer to another member
19 of the team. And then -- yeah. So, yes,
20 right now I'm also operating as a chief
21 product officer.

22 Q. So chief innovation officer,
23 chief compliance officer, chief product
24 officer?

25 A. Yep.

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1 Q. A lot of hats.

2 A. It is.

3 Q. And do your responsibilities as a
4 chief product officer differ from what we
5 talked about as a chief innovation officer?

6 A. Yeah, tremendously. Yeah. Very
7 different.

8 Q. Okay. And what are your roles as
9 a chief product officer?

10 A. Chief product officer -- so the
11 distinction between innovation and product
12 is that innovation was supposed to be all
13 of the new products going forward.

14 The product team, you know,
15 historically was responsible for the kind
16 of -- the existing set of products, the
17 platform, you know, all the maintenance and
18 the administration of all those things.

19 So since there is no separate
20 innovation -- since I'm the innovation
21 person and the product person, I'm kind of
22 doing the whole thing.

23 Again, you can just say --
24 similar to compliance, you can say that in
25 a lot of different organizations they'll

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1 have, like, new products and existing
2 products as the -- under the same umbrella.

3 And in the case of Celsius, it
4 was distinct when I started.

5 Q. And did you segment your teams
6 underneath you? So, like, you would have
7 your product team and your innovation team,
8 or was it kind of blended between each
9 other?

10 A. Yeah, this change happened post
11 the Chapter 11 filing, so there is -- you
12 know, there's one person left from the
13 innovation team. So -- and he's -- and
14 we've incorporated him into the product
15 team.

16 Q. And your appointment as chief
17 product officer happened after the
18 Chapter 11 case?

19 A. And -- yeah, and actually --
20 sorry to -- I should clarify, there has
21 been no official appointment. You know,
22 I'm not designated as the chief compliance
23 officer -- as a chief product officer.

24 I've just been taking on that
25 responsibility. I think the -- from my

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1 perspective, we wanted to make sure that we
2 had a transition plan for the CCO role
3 before we changed my, you know, official
4 title.

5 Q. Okay. And prior to the
6 Chapter 11 case, did you do any work on the
7 existing earned product or the existing
8 offerings of the company?

9 MS. BRIER: Objection to form.

10 BY MR. COLODNY:

11 Q. I guess I'll ask it again.
12 You said that you became the
13 chief product officer or assumed the roles
14 of the chief product officer after the
15 Chapter 11 case, and you described the
16 chief product officer -- the difference
17 between the chief product officer and the
18 chief innovation officer as product being
19 focused on earned and existing offerings,
20 and innovation being premised on future
21 earnings and future products.

22 Did you have any involvement in
23 the earn and past products prior to the
24 Chapter 11 cases?

25 A. In my product capacity -- product

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1 or innovation capacity, not really. I
2 mean, nothing of substance that I can
3 remember.

4 Q. Okay. And the other capacity
5 would be?

6 A. Compliance. I mean, so, you
7 know, since -- until April 2022, every
8 customer was an earn customer pretty
9 much --

10 Q. Uh-huh.

11 A. -- to my knowledge. Every single
12 customer we had fell under my purview as
13 the chief compliance officer.

14 Q. Okay. So then we're here today
15 to talk about the terms of use.

16 Can you describe your involvement
17 in the terms of use after -- let's start in
18 September when you joined. September 2021,
19 correct?

20 A. Correct.

21 Q. So what was your -- what was your
22 involvement in the terms of use on
23 September 2021, in that first period before
24 you got promoted?

25 A. I -- again, just to -- I

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1 continued with my role as head of
2 innovation while I was the chief compliance
3 officer, so I was also dual hatting at that
4 time.

5 I was not involved in writing
6 terms of use. I was not involved in,
7 like -- you know, I was not like a step in
8 the process of having those reviewed or
9 approved.

10 I often consulted with them with
11 my innovation hat on from, you know, just
12 verifying, like, how we -- you know, how we
13 talked about certain things.

14 I often reviewed them in my
15 compliance role for, like, the -- the one
16 that stands out to me was we often had
17 questions about, like, our privacy policy
18 and, you know, what information we were
19 able to share with, you know, regulators or
20 other kind of third parties that were
21 asking for data about our customers.

22 So I was consulting mainly for
23 those purposes.

24 Q. And you mentioned how we talked
25 about certain things. What are you

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1 referring to there?

2 A. So, for example, the first
3 product that the innovation team kind of
4 sponsored or -- was the swap product. So
5 we worked with our legal and regulatory
6 teams on crafting -- on the final outcome
7 of the terms -- the changes to the terms of
8 use for the swap product.

9 Just like seeing how do we talk
10 about that, is that consistent with how
11 competitors talk about it, things like
12 that.

13 Q. And when was the swap product
14 released?

15 A. We went into alpha in October
16 '21, and then just did like a slow rollout
17 over the months that followed. I think we
18 went general availability May 2022 or
19 something in that range.

20 Q. And did you have any other role
21 in how the terms of use referred to
22 products other than swap?

23 A. No.

24 Q. Were you involved in the
25 solicitation of acceptances of the terms of

55

1 use?

2 A. No.

3 Q. Could you describe your
4 involvement in the release of terms of use
5 Version 6? And when I -- I'm using terms
6 from your declaration.

7 Do you understand what I'm
8 saying --

9 A. Yep.

10 Q. -- when I say Version 6?

11 What do you understand Version 6
12 to be?

13 A. This was the -- when we
14 transferred the customer relationship from
15 the UK entity to the U.S. entity.

16 Q. Okay. And what was your role in
17 the rollout of Version 6?

18 A. That was -- that happened when I
19 was the head of innovation, not the chief
20 compliance officer. So I had zero -- zero
21 direct analysis or influence on it.

22 Again, because I was involved
23 with a lot of different parts of company.
24 I knew it was taking place. I also
25 reported to Roni at the time.

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1 So, you know, I'm sure, you know,
2 parts of that came up in conversation, but
3 it wasn't something that I was tracking
4 directly.

5 Q. Okay. What was Mr. Cohen-Pavon's
6 role in the release of Version 6?

7 A. I think as our -- I should say I
8 don't know exactly, because -- because that
9 wasn't the area that I worked in.

10 But my overall understanding was
11 that he was kind of leading that
12 initiative.

13 Q. Do you know -- who were the other
14 main people that worked on the rollout of
15 Version 6?

16 A. I'm sure there were many, many
17 people involved in it. The individual --
18 one individual that I think had a -- played
19 a significant role is a guy named
20 Matthew de la Fuente. He was on the
21 project management team. I think he was
22 coordinating a lot of the activities.

23 Q. Does Matthew still work at the
24 company?

25 A. I think -- no, he was let go, I

1 think, last week.

2 Q. And what was his role in the
3 rollout of Version 6?

4 A. I think as, like, a coordinator.
5 You know, he's -- I think he headed our
6 project management office. So just
7 coordinating different -- coordinating
8 various initiatives across different
9 departments.

10 Q. So Matthew de la Fuente was the
11 project -- project manager that was in
12 charge of the rollout?

13 A. I'm not certain, like, if he was,
14 you know -- if there's a piece of paper
15 that says, like, here's the name of the
16 project and who's the head. I'm not sure
17 if he's the guy. But I know that function
18 reported to him. So he would have been,
19 you know, up to date on it.

20 Q. So I have a little bit of
21 background here because my wife is a
22 product manager.

23 A. Okay.

24 Q. But generally in Celsius, when
25 you had a project like this, would you have

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1 a product manager, project manager that
2 would lead it?

3 A. Yeah, yeah. So, like, when
4 you -- you know, my experience -- you know,
5 20-something years of experience in this --
6 in product development and mostly in
7 startups, so small startups usually don't
8 have project managers, right? Product
9 managers do it all. Celsius was scaling
10 pretty dramatically.

11 And Matthew came in as part of
12 that, to build out a project management
13 function to kind of -- you know, so that
14 product managers could focus on their --
15 their area, you know, empathizing with the
16 user, building products that the people
17 want.

18 And project managers could take
19 the work of coordinating between the
20 departments.

21 Q. Okay. And so Matthew, while he
22 might not have been the project manager,
23 per se, he was the one that was organizing,
24 tracking milestones, work plans?

25 A. Exactly, yeah.

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1 Q. Who was the product manager?

2 A. I'm not sure. Because I wasn't
3 the -- I wasn't in charge of product at
4 that time. I wasn't -- I'm not sure. We
5 also -- we've had, like, a lot of people
6 leaving from the product team.

7 Q. Uh-huh.

8 A. So, yeah, I'm not sure.

9 Q. Okay. And other than Roni and
10 Matthew, any other individuals that jump
11 out as -- at you as being kind of the main
12 people involved in the rollout of terms of
13 use Version 6?

14 A. Those are the two people I would
15 think. Like, if I had a question about it,
16 I would go to those guys for more details.
17 I mean -- yeah.

18 Q. Were you involved in the rollouts
19 of Version 7 or 8 of the terms of use?

20 A. Not directly.

21 Q. And who was involved in those
22 two?

23 A. I'm not sure, actually. I
24 don't -- I mean, my assumption would be the
25 same individuals that were involved in a

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1 lot of the terms of use rollout, so legal,
2 regulatory, potentially product -- I mean,
3 likely product.

4 Actually, 100 percent product.

5 Somebody from product would have had to
6 have been involved because of the way that
7 terms of use -- the way that it's
8 implemented.

9 A product manager sort of has to
10 take the text of the terms of use and put
11 it into the -- into the apps. So a product
12 person would have been involved, and a
13 project manager would have been involved.

14 Q. Okay. Are you familiar with the
15 QA processing in releasing products that
16 Celsius uses?

17 A. I am familiar -- I am getting
18 more familiar with it now since I've
19 assumed the product -- the head of product
20 role or the -- taken on those
21 responsibilities. I don't know the details
22 around it, though.

23 Q. And do you know if there was a QA
24 head on the rollout of terms of use
25 Version 6?

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1 A. I couldn't tell you if there was
2 a person.

3 Q. Do you know if QA was done on the
4 rollout of Version 6?

5 A. I don't know. I don't have
6 firsthand knowledge of -- I wasn't --
7 because I was not involved in it, I can't,
8 you know, tell you with certainty that that
9 happened.

10 I would be -- you know, from the
11 research that I did -- I would say from the
12 research that I did, most of the -- to my
13 understanding, everything that we pushed
14 out had -- went through a QA process.

15 I just can't tell you the
16 specifics of who, like, exactly checked it,
17 what processes they ran through. How
18 things run from staging to deployed and all
19 that stuff. But, yeah, it should have gone
20 through a QA process.

21 Q. And just for the record, what's
22 your understanding of what QA is?

23 A. Quality assurance is making sure
24 that what is -- what is intended is what is
25 released.

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1 Q. And what do you mean "what is
2 intended is what is released"?

3 A. What the kind of
4 business/product/legal/regulatory, what
5 the -- you know, what the people who are
6 asking for something to be pushed into
7 production is actually meeting those
8 requirements.

9 So business comes up with
10 requirements. QA validates that those --
11 I'm sorry -- engineering implements that.
12 QA validates that what was implemented
13 meets the requirements.

14 Q. Okay. And you understand that as
15 part of a QA process, you check to make
16 sure everything works in the software,
17 correct?

18 A. That's right.

19 Q. Okay. What has been your role
20 since the Chapter 11 case has started?

21 A. So maintain my role as the chief
22 compliance officer. There hasn't been much
23 on the innovation front just because we're
24 not really developing new products.

25 And then when the previous chief

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1 product officer left the company, I took on
2 responsibility for the product team. So
3 I've been, you know, doing my best to get
4 up to speed on all the different --
5 different activities under -- you know,
6 that are going on at the company related to
7 the product.

8 Q. And I guess when you're not
9 answering deposition questions from lawyers
10 like me, what's your day-to-day look like?

11 A. I mean, I spent a very
12 significant portion of my time -- and this
13 is, like, part of the reason why I'm
14 trying -- or why it was important for me to
15 transition -- it is important for me to
16 transition my chief compliance officer
17 responsibilities is to work on the recovery
18 plan with the creditor committee.

19 Q. Okay. So I want to now take a
20 step back and talk about generally the earn
21 program.

22 What's your understanding of the
23 transaction the accountholders entered into
24 with Celsius when they transferred their
25 cryptocurrency to Celsius to participate in

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1 the earn program?

2 A. Yeah. The way I understood it is
3 that a customer back in the spring of 2021,
4 when I became one, was that I was
5 transferring title of my coins to the
6 company.

7 Q. And how did you understand that?

8 A. From reading the terms of use.

9 Q. And you read the terms of use
10 when you became a customer?

11 A. Yep.

12 Q. How did you find those terms of
13 use?

14 A. On the website.

15 Q. Do you know where they are on the
16 website?

17 A. I check them all the times.

18 Yeah, they're at the bottom of the page --
19 the bottom of the home page.

20 Q. You say you transferred title.

21 What was the transaction by which you
22 understood that you were transferring
23 title?

24 A. Sending cryptocurrency from a
25 wallet -- an external wallet to my deposit

65

1 address at Celsius.

2 Q. And when you sent that currency
3 to Celsius, did you understand that you
4 were selling it to Celsius?

5 A. Not with those -- like, I didn't
6 have those -- the "selling" word in mind,
7 but I understood it to be a transfer of
8 title.

9 Q. I'm trying to get through what
10 the actual transaction was that transferred
11 title.

12 Was it a -- when I think about --
13 I'm going to give my house to somebody,
14 right? I sell my house to them. They now
15 own the house.

16 What was the transaction that
17 occurred?

18 MS. BRIER: Objection to form.

19 THE WITNESS: Yeah. So, again,
20 I'm speaking -- you know, like I've
21 said, I'm not an attorney. But my --
22 the way -- you know, kind of as a
23 layperson, a customer, my view was I'm
24 giving the company my coins, and
25 they're going to give me rewards in the

66

1 shape of coins back.

2 And then when I want to withdraw
3 them, I should be able to withdraw
4 them.

5 BY MR. COLODNY:

6 Q. Okay. Did you think that you
7 were loaning Celsius your coins?

8 A. Again, like --

9 MS. BRIER: Object to form.

10 THE WITNESS: -- a lot of the --
11 these terms -- like the weight of these
12 terms was not -- was not kind of -- was
13 not something that I thought a lot
14 about prior to joining Celsius.

15 So at the time I became a
16 customer, like the idea of me -- of
17 this being a loan wasn't necessarily
18 something that I thought about, but...

19 BY MR. COLODNY:

20 Q. But you -- so, I guess, when you
21 gave your coins to Celsius, what did you
22 understand was happening? What did you
23 understand Celsius was going do with those?

24 What did you think that your
25 rights -- well, I'm sorry. Strike that.

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1 When you -- when you transferred
2 your coins to Celsius, what did you
3 understand was happening in that
4 transaction?

5 MS. BRIER: Object to form.

6 THE WITNESS: I was sending -- I
7 think I -- I think I answered it. If
8 I'm repeating myself, it's because I
9 think -- I'm thinking of the question
10 the same way as your -- the answer to
11 the question the same way as your
12 previous question, was just that I was
13 sending my coins to the company to go
14 out and earn the -- earn yield on
15 the -- on those assets. And then I
16 would get a -- you know, get a portion
17 of that back.

18 BY MR. COLODNY:

19 Q. And what did you understand
20 Celsius was doing with your coins to earn
21 yield in -- I believe you said you first
22 deposited -- was it March 2020?

23 A. Yep. Yes. And I can't remember
24 the time -- the exact time. You know, I
25 don't remember -- as a customer, I don't

68

1 remember, like, at what point my
2 understanding shifted exactly.

3 But from watching the AMAs, you
4 know, hearing Alex Mashinsky talk about
5 institutional lending as a primary means of
6 earning yield, and then over time, I
7 remember it shifting into being active in
8 DeFi as a means of generating yield.

9 Q. And what did you understand
10 Celsius was doing when Alex talked about
11 institutional lending?

12 MS. BRIER: Objection to form.

13 THE WITNESS: Lending out the
14 tokens to institutions for whatever
15 purposes that they might have, and then
16 they would pay the company interest,
17 and we would be -- you know, as a
18 customer, I would benefit from that.

19 BY MR. COLODNY:

20 Q. Okay. Did you understand that
21 there was a certain type of loans that the
22 company was undertaking at that time?

23 MS. BRIER: Objection to form.

24 THE WITNESS: I definitely did
25 not look into -- I mean, again, as a

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1 customer, I definitely was not looking
2 into the type -- exact type of loans or
3 things like that at the time.

4 BY MR. COLODNY:

5 Q. So you said before that you were
6 interested in the terms of use.

7 What were you looking for in the
8 terms of use when you gave your
9 cryptocurrency to Celsius?

10 A. Sure. Yeah. The -- generally,
11 like, one of the reasons why someone in the
12 industry like -- when I'm looking at a
13 competitor or somebody launching a new
14 product, I'll look at the terms of uses to
15 see how are they delivering the service,
16 what licenses do they have, what partners
17 do they work with, what are the terms --
18 yeah, what the terms between me and the
19 company.

20 You know, spend a lot of time
21 reviewing kind of the big brands in crypto,
22 Coinbase, Kraken, Gemini, and comparing
23 those to Celsius.

24 Q. And why did you pick Celsius?

25 A. I mean, they offered a great

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1 yield. Like I mentioned before, I was
2 spending a lot of time in DeFi. It was
3 just super time-intensive, and I didn't
4 have the time for it once I had the kid.

5 And so -- and they were really --
6 from my perspective, they seemed to be
7 running a good operation, and the company
8 was growing quickly. You know, large
9 number of users. Those kind of things went
10 into my decision.

11 And the fact that this other --
12 you know, that watercooler moment. There
13 were, like, a bunch of people that said,
14 oh, yeah, I use it too.

15 Q. And what did you rely on to come
16 to your conclusion that Celsius was running
17 a good operation?

18 MS. BRIER: Objection to form.

19 THE WITNESS: You know, scale is
20 definitely one. Just from -- in my --
21 in the decade or so that I worked in
22 traditional finance.

23 Worked with hundreds of different
24 hedge funds and asset managers and to
25 manage a book of hundreds of millions

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1 or billions of dollars is just a
2 complex -- a very complex -- there's a
3 lot of complexity.

4 So just the fact that Celsius, at
5 the time, was managing, I think --
6 yeah, when I signed up, I think they
7 had hundreds of millions.

8 And over the course of 2020, I
9 think that moved into -- yeah, I think
10 by the end of 2020, it moved into
11 billions. So it was, you know, not
12 necessarily a good assumption, but the
13 assumption was based on the scale.

14 The fact that they were managing
15 a book that big, you know, led me to
16 believe, you know, that they must have
17 good systems and processes in place.

18 BY MR. COLODNY:

19 Q. And other than the size and the
20 fact that a lot of other people were giving
21 their coins to Celsius, were there any
22 other things you relied on to come to the
23 conclusion that they were safely investing
24 money?

25 MS. BRIER: Objection to form.

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1 THE WITNESS: The app worked.

2 You know, that's a surprisingly low bar
3 for crypto. But it's actually a pretty
4 significant one. There's a lot of
5 stuff in crypto that just doesn't work
6 at all.

7 So, you know, downloading the
8 app, going through the KYC process, you
9 know, sending coins in, seeing those
10 coins appear in the app. Since all
11 that stuff worked, it seemed good.

12 And, I mean, I think -- it's,
13 like, a very commonly -- you know, we
14 observe this happening a lot is that a
15 customer -- and I did this as well --
16 would deposit coins, validate that
17 they're there, withdraw them, validate
18 that you can get them back, and then
19 people usually push in more coins once
20 they have confirmed that, and I did the
21 same thing.

22 BY MR. COLODNY:

23 Q. And why would you confirm that
24 you could get your coins back?

25 A. It's so -- you know, just to make

1 sure that the coins would be there if there
2 was a time in the future when you wanted to
3 get them back.

4 Q. So you mentioned the size of
5 Celsius, the fact that the app worked. You
6 tested deposit and withdrawal features.

7 Any other things that kind of led
8 to your decision to put your coins in
9 Celsius?

10 A. I mean, yeah, without a doubt, I
11 mean -- you know, I watched the AMAs. I
12 felt like, you know, I like the -- I like
13 the ideas that Alex was talking about.

14 Yeah, I would say that's a factor
15 also. It seemed like a -- seemed like
16 somebody that was -- had a mission to do
17 something good and was -- you know, just as
18 a -- yeah, I think a lot of things that he
19 was talking about just in terms of, like,
20 you know, keeping your money in the bank
21 and not earning any interest or not earning
22 good interest, you know, I thought was a
23 good point that he made; so...

24 Q. Any other comments that you --
25 from the AMAs that stuck out in your mind

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1 as something that you would remember
2 thinking, oh, this was something Alex said
3 I should give my money to him?

4 MS. BRIER: Objection to form.

5 Outside the scope.

6 You can answer.

7 THE WITNESS: I'm sorry. Can you
8 restate that?

9 BY MR. COLODNY:

10 Q. Yeah.

11 You said that one of the things
12 you relied on was the AMAs. And you
13 mentioned Alex's message that you could put
14 your money in a bank and earn no interest
15 or put your money in Celsius and get this
16 interest.

17 Other than the yield that Celsius
18 provided, were there any other kind of
19 things that stick out in your mind as
20 something that you relied on from the AMAs
21 in choosing to invest in Celsius?

22 MS. BRIER: Same objections.

23 Outside the scope.

24 THE WITNESS: Yeah, it was just a
25 general -- general impression that I

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1 had that it seemed like a good company
2 that was trying to do the right thing.
3 They had a working app.

4 A lot -- you know, hundreds of
5 thousands of other customers, large
6 scale. Yeah, actually something I
7 didn't mention before was that from
8 working in the industry, people talk
9 about Celsius.

10 And at that time, definitely
11 prior to me joining, I had not heard
12 really any negative -- anything
13 negative about Celsius. So, yeah, for
14 all those reasons.

15 I mean, yeah, many cryptocurrency
16 exchanges were in the business of
17 offering institutional loans right
18 around that time, like, 2019, 2020.
19 And Celsius was kind of viewed as,
20 like, one of the big, big lenders out
21 there -- lenders, borrowers out there.

22 So, again, just, like, knowing
23 that people in the industry -- lots of
24 counter -- there were lots of
25 counterparties in the industry working

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1 with Celsius. All these things kind of
2 made me feel comfortable with it.

3 BY MR. COLODNY:

4 Q. What type of institutional loans
5 did you understand that Celsius was issuing
6 at that time?

7 MS. BRIER: Objection to form.

8 Outside the scope.

9 THE WITNESS: Yeah. Again, the
10 exact, like, nature of the loan --
11 yeah, the type of loan, I didn't really
12 dig into the details of it.

13 But generally, from industry
14 knowledge, would be that institutional
15 borrowers would deposit collateral to
16 secure their loan and would get
17 whatever coin they were looking for in
18 return and pay an interest rate to the
19 company.

20 BY MR. COLODNY:

21 Q. Okay. So I want to go back to
22 just your general understanding of the
23 transaction that accountholders entered
24 into when they gave their coins to Celsius.

25 And in your mind, has that

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1 changed over the time of Celsius's
2 existence, or has it always been the same
3 transaction; I give my coins to Celsius to
4 participate in your earn program? Has that
5 transaction ever changed?

6 MS. BRIER: Objection to form.

7 THE WITNESS: I mean, it changed
8 materially in April 2022 with the
9 release of custody. But other than
10 that, you know, my understanding as
11 both a customer and employee, is that's
12 largely been -- that's generally been
13 the relationship between customers and
14 the company.

15 BY MR. COLODNY:

16 Q. Okay. And I potentially asked a
17 bad question.

18 But I want to kind of put custody
19 to the side --

20 A. Okay.

21 Q. -- and just talk about the --

22 A. Sure.

23 Q. -- earn product.

24 In your mind, has the transaction
25 that the customer entered into with Celsius

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1 when it transferred coins to it to
2 participate in the earn program, has that
3 changed at any point in the company's
4 history?

5 A. Based on my understanding, no.

6 Q. Okay. Now, we'll get into the
7 terms of use a little later, but as a --
8 just stepping back as a layperson, do you
9 think there's any conflict between loaning
10 somebody something and transferring title
11 to them?

12 MS. BRIER: Objection to form.

13 THE WITNESS: Is there a conflict
14 between loaning and transferring title?

15 That's not something -- is there a
16 conflict? Yeah, I don't think I
17 understand it.

18 BY MR. COLODNY:

19 Q. So if I -- let's use the house
20 analogy again.

21 If I lease you my house so that
22 you can live in it for a period of time, I
23 haven't transferred -- you don't own my
24 house, right?

25 MS. BRIER: Object to form.

1 THE WITNESS: Correct. I don't
2 own your house.

3 BY MR. COLODNY:

4 Q. But if I sell you my house, now
5 you own it?

6 A. Correct.

7 Q. So I guess my point is, is there
8 a distinction between lending something to
9 you, which you have an obligation to return
10 to me, versus you taking title to
11 something?

12 MS. BRIER: Objection to form.

13 THE WITNESS: Yeah, I understand
14 that comparison that you're making.

15 You know, one thing I think --
16 maybe is a way to answer that, that I
17 should have added to a previous answer,
18 is that one of the things that occurred
19 to me when I was reviewing the terms of
20 use as a customer was that me passing
21 title -- you know, giving my coins to
22 the company was important, because I
23 knew that the company must be doing
24 lots of different activities to
25 generate yield, making loans,

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1 participating in DeFi, doing other
2 kinds of activities.

3 If I -- if those coins were still
4 my property, then I would be subject to
5 the tax implications of each one of
6 those transactions. And I knew
7 firsthand -- I mean, that was kind of,
8 like, the appeal to me as a customer
9 was that in DeFi, like, the cost of
10 making those transactions was
11 significant.

12 And because I'm -- you know, as
13 an individual -- as an individual, I
14 wasn't moving millions of dollars, tens
15 of millions or hundreds of millions.

16 So a lot of times the transaction
17 costs and the taxes would significantly
18 eat into any kind of gains I was
19 making.

20 So, actually, like, it was -- I
21 saw the fact that Celsius was taking on
22 these coins as their property as, like,
23 important -- an important way for me
24 to -- you know, to be able to not be
25 responsible for those tax consequences

1 until I got the coins back.

2 BY MR. COLODNY:

3 Q. Okay. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 BY MR. COLODNY:

10 Q. And I guess the legal terms are a
11 bit confusing, but to maybe use another
12 example, you mentioned that you understood
13 you were transferring title to Celsius,
14 because then they could do all sorts of
15 other things with your coins.

16 I guess a better example than a
17 house is a car. If I borrow my car from
18 Volvo, I can then use that car to do all
19 sorts of things -- right? -- to do my
20 job --

21 A. Uh-huh.

22 Q. -- to have an Uber.

23 So in your mind, do you
24 necessarily have to give up title to
25 something to allow someone else to use that

1 property?

2 MS. BRIER: Objection to form.

3 THE WITNESS: I understand the
4 point that you're making. That just
5 wasn't something -- I wasn't thinking
6 of -- especially, like, as a customer,
7 I wasn't thinking about, could this be
8 done in another structure.

9 I just reviewed what it was on
10 the face of it, you know, which was me
11 transferring my property to this other
12 entity for them to, you know, generate
13 yield.

14 BY MR. COLODNY:

15 Q. Okay.

16 MR. COLODNY: Do you want to take
17 a break, Grace?

18 MS. BRIER: Up to you.

19 Or do you want to take a break?

20 (Whereupon, discussion held off
21 the written record about having a
22 break.)

23 BY MR. COLODNY:

24 Q. Do you have any role in Celsius's
25 marketing in your time at the company?

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1 MS. BRIER: Objection to form.

2 Outside the scope.

3 THE WITNESS: Marketing was
4 never -- and this is an answer that
5 I'll -- you know, I mentioned -- or I
6 used this kind of phrase before.

7 Compliant -- in my role as chief
8 compliance officer, we are not a stop
9 on the way to marketing materials being
10 released.

11 And, again, that's a good example
12 of, like, what I talked about in the
13 beginning. In many other
14 organizations, I'm sure a chief
15 compliance officer might have been, but
16 that wasn't my area of specialty or
17 focus.

18 And so, yeah, you know, I may
19 have been copied on it -- again, I just
20 want to stress that I'm sure if
21 somebody digs through the emails,
22 they'll find me CC'd on something.

23 And if it related to anti-money
24 laundering or sanctions or things like
25 that, I certainly would chip in.

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1 If -- yeah, there might be some
2 occasions, like, where in my
3 discussions with the regulatory or
4 legal team, I picked up on some
5 guidelines that they had, you know,
6 shared with the marketing team, and I
7 might have reinforced that, just to
8 kind of chip in.

9 But I was not, like, a routine
10 stop on the release of marketing
11 materials. And in my innovation
12 capacity, I met with the marketing and
13 product teams for swaps and credit
14 cards and other new product
15 initiatives, but -- but was not, like,
16 the decision-maker or reviewer of final
17 content before it was released.

18 BY MR. COLODNY:

19 Q. And so you -- I guess to ask a
20 more direct question, did you approve any
21 of the marketing materials that Celsius
22 released?

23 A. So I don't believe that I was
24 part of any -- I mean, I'm not -- I don't
25 have firsthand knowledge of the approval

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1 processes that existed for a lot of the
2 marketing materials or for any of the
3 marketing materials.

4 There's some possibility that
5 someone ran some piece of marketing past me
6 and said, does this look good, and I might
7 have said yes. But this was not, like, a
8 routine -- routine thing.

9 It wasn't, like, oh, we always
10 have to check with Oren before this goes
11 out.

12 Q. Did you draft any of the
13 marketing materials for Celsius?

14 MS. BRIER: Objection to form.

15 Outside the scope.

16 THE WITNESS: That seems
17 highly -- I mean, we may have written
18 some, like, marketing briefs or
19 something like that for swaps.

20 Again, in my innovation role,
21 like, these are the points that
22 customers will care about, here are
23 some potential ideas for messaging,
24 things like that.

25 But absolutely not the final --

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1 the final product. You can imagine
2 people who are in the marketing role,
3 the last thing that they would want is
4 the chief compliance officer writing
5 their marketing; so...

6 BY MR. COLODNY:

7 Q. I can understand that.

8 So other -- I guess other than
9 the -- I understand if someone -- if you're
10 developing swaps and someone wants to write
11 something about it, they may consult you.

12 I think that -- is that what
13 you're referring to?

14 A. Exactly.

15 Q. And other than that concept, were
16 you drafting any marketing materials for
17 Celsius?

18 MS. BRIER: Objection to form.

19 Outside the scope.

20 You can answer.

21 THE WITNESS: I'm just thinking
22 about it. I'm sorry. I'm just
23 thinking about if -- yeah, it was
24 not -- it was not my role.

25 I can imagine -- again, I can

1 imagine that there's some document out
2 there where, like, there's a comment
3 from Oren Blonstein piping in with
4 something, but -- but, yeah, I don't --
5 I don't think so. I don't think -- it
6 certainly wasn't anything, like, on a
7 consistent or ongoing basis.

8 BY MR. COLODNY:

9 Q. Did Celsius have a target
10 demographic or user that it was attempting
11 to attract?

12 MS. BRIER: Objection to form.

13 And outside the scope.

14 THE WITNESS: [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Before that -- again, in my chief
20 compliance officer, wasn't something
21 that I -- role, I wasn't -- that wasn't
22 something that I was focused on, on
23 innovation -- on the innovation side.

24 We definitely thought about it
25 for different products. And, in

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1 particular, we did some work around the
2 credit card on thinking about the type
3 of customer that might be interested in
4 it.

5 BY MR. COLODNY:

6 Q. Other than specific products, did
7 you think about it -- did Celsius think
8 about it generally as trying to attract a
9 specific type of customer prior to the
10 petition date?

11 MS. BRIER: Same objections.

12 THE WITNESS: I don't have
13 firsthand knowledge of that.

14 BY MR. COLODNY:

15 Q. And now, I guess, generally
16 thinking about the typical Celsius customer
17 on the petition date, do you have an
18 understanding of what the relative
19 percentage of uncredited and accredited
20 investors were?

21 A. On --

22 MS. BRIER: Objection to form.
23 Outside the scope.

24 THE WITNESS: By count of
25 customers, I -- you know, I have a

90

1 rough idea that the number of
2 accredited customers was a tiny
3 fraction, you know, by customer count.
4 I think it's quite large relative to
5 other crypto service -- yeah, crypto
6 service providers.

7 In other words, we have a
8 large -- a large number of accredited
9 people -- people that are deemed
10 accredited investors as customers. I
11 would say, yeah, like, among the
12 largest in crypto. But by customer
13 account, a tiny -- tiny percentage.

14 BY MR. COLODNY:

15 Q. Do you have a ballpark number
16 that you think of when you think of
17 percentage?

18 A. Whatever, like, 5,000 over a
19 million is; so...

20 Q. A very small percentage?

21 A. Yeah.

22 Q. And did those -- strike that.
23 Do you have a general idea of
24 breakdown of Celsius customers of U.S.
25 customers versus rest of the world?

1 MS. BRIER: Objection to form.

2 THE WITNESS: I -- again, there's
3 definitely people who would have the
4 exact numbers, like, quotable, but my
5 rough understanding was that we had --
6 it was roughly an even split between
7 U.S. and the rest of the world.

8 And that was -- and then I -- I
9 think it was U.S. customers were
10 roughly the majority of the assets held
11 versus the rest of the world.

12 So I think it was relatively even
13 on the customer account, and a majority
14 for the assets -- value assets.

15 BY MR. COLODNY:

16 Q. And is majority 60 percent?
17 80 percent?

18 A. I actually thought it was around
19 55.

20 Q. So about even for both?

21 A. Correct. And maybe a huge caveat
22 here is that the data changed dramatically
23 in the weeks leading up to the pause in
24 withdrawals obviously.

25 So -- but, you know, if you'd

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1 asked me this question in, like, March of
2 2022, that's -- that's what I would say the
3 answers are.

4 If you're talking about, like,
5 for the customers that remain, what the
6 exact breakdown is, yeah, it's -- I have
7 definitely reviewed that. I don't have it
8 at the top of my mind, but I don't think
9 it's dramatically off.

10 Q. How did it change in the weeks
11 leading up to the pause?

12 A. Just -- you know, they're --
13 that's what I'm saying, I don't know the
14 specifics of how it changed, right?

15 But I'm just saying that there
16 were -- there were a huge volume of
17 withdrawals on the platform in the -- in
18 the months leading up to the pause in
19 withdrawals.

20 So it may have -- may have
21 shifted.

22 Q. Okay. But you don't know if more
23 international folks withdrew than U.S.
24 folks?

25 A. I don't have that data. I know

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1 that that analysis was done, but I don't
2 have that data.

3 Q. Do you know generally if it was
4 one way or the other?

5 MS. BRIER: Objection to form.

6 Outside the scope.

7 THE WITNESS: Yeah, I don't know.

8 BY MR. COLODNY:

9 Q. So I want to talk about one thing
10 in particular.

11 Do you remember Coinbase released
12 a 10-Q in May of 2022 that included a
13 bankruptcy risk disclosure?

14 A. I do.

15 MS. BRIER: Objection to form.

16 BY MR. COLODNY:

17 Q. Do you remember -- can you
18 describe the general market reaction to
19 that disclosure?

20 MS. BRIER: Objection to form.

21 And way outside the scope.

22 THE WITNESS: There was a lot of
23 concern about people -- you know,
24 whether people's assets were at risk if
25 the company were to go bankrupt.

94

1 BY MR. COLODNY:

2 Q. And why do you think people were
3 concerned by that disclosure?

4 MS. BRIER: Objection to form.

5 Calls for speculation. Outside the
6 scope.

7 THE WITNESS: Yeah, I think
8 the -- the whole -- this -- the not
9 your -- not your keys or not your
10 coins, that whole thing, right?

11 The -- you know, there's
12 definitely like this -- there's the
13 people who are willing to give away
14 control of their coins by sending them
15 to a CeFi institution, and then those
16 that aren't because they want to
17 preserve the control over their keys
18 and their coins.

19 So I think, like, that was the
20 general -- the general mindset.

21 BY MR. COLODNY:

22 Q. So you mentioned "not your keys,
23 not your coins." What is that? What is
24 that phrase?

25 A. Basically means -- so crypto --

95

1 the way that cryptocurrency works is that
2 if you're the -- if you're the bearer of
3 the private keys for your crypto, you're in
4 control of them. But they're a bare asset,
5 right?

6 So if you -- when you send your
7 coins to someone else, you're basically
8 giving them control over them, you're
9 giving them the keys -- you're taking --
10 yeah, you're giving them control over your
11 assets and -- or over your coins.

12 So no matter what their
13 representations are, those coins are held
14 by the person you send them to.

15 Q. So what do you understand the
16 term "not your key, not your coins" to mean
17 from a risk perspective?

18 MS. BRIER: Objection to form.

19 THE WITNESS: If you -- if you
20 want to maintain -- you know, if -- if
21 you want to retain -- if you want to
22 mitigate -- or if you want to be the
23 sole source of the risk for your coins,
24 you should hold the keys.

25 Obviously that -- that present --

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1 for a lot of people -- and it's a
2 decision that I've made as an
3 individual as well, you know, the --
4 there's substantial risk if you hold
5 the keys, you know, for yourself as
6 well of loss, of hacking and other
7 concerns.

8 So there's risks on both sides --
9 both sides.

10 BY MR. COLODNY:

11 Q. Thank you.

12 So going back to Coinbase's 10-Q,
13 are you aware of communications from
14 accountholders to Celsius about that
15 disclosure?

16 A. I -- sorry.

17 MS. BRIER: Objection to form.

18 Outside the scope.

19 Go ahead.

20 THE WITNESS: I am not.

21 BY MR. COLODNY:

22 Q. Are you aware of any reaction
23 Celsius experienced or saw in response to
24 that disclosure?

25 MS. BRIER: Same objections.

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1 THE WITNESS: I am not. You
2 know, again, from my role in both
3 innovation and compliance, you know, we
4 didn't -- that wasn't really in my
5 purview.

6 Sorry. Whenever we get a chance,
7 if we could break.

8 MS. BRIER: Absolutely. Is now a
9 good time for a break?

10 MR. COLODNY: Yeah, it is. Thank
11 you.

12 THE VIDEOGRAPHER: All right.
13 The time is currently 11:11 a.m., and
14 we are going off the record for Media
15 Unit No. 1.

16 (Whereupon, a recess was taken at
17 11:11 a.m.)

18 THE VIDEOGRAPHER: The time is
19 currently 11:28 a.m., and we are back
20 on the record for Media Unit No. 1 of
21 today's testimony.

22 MR. COLODNY: I think this is
23 Exhibit 7.

24 (Whereupon, Exhibit 7 is marked
25 for identification.)

98

1 BY MR. COLODNY:

2 Q. Do you recognize this document?

3 A. I do.

4 Q. What is this document?

5 A. This is the declaration related
6 to the terms of use -- my declaration
7 related to the terms of use.

8 Q. And is there anything that you
9 would like to change about this document
10 based on everything that happened --
11 between when you signed it and today?

12 A. No.

13 Q. This is true and accurate to the
14 best of your knowledge?

15 A. That's correct.

16 Q. Did you draft this declaration?

17 A. No.

18 Q. What was your role in
19 constructing this declaration?

20 A. Provided input on it, you know,
21 some content through interviews. And then
22 when it was drafted, I reviewed it and
23 provided some redlines and then -- yeah,
24 and then approved it.

25 Q. Who drafted the document?

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1 A. Someone from Kirkland.

2 Q. Is the testimony in this document
3 based off of your personal knowledge?

4 A. It's knowledge that I gathered
5 through research and discussions with other
6 staff at the company.

7 Q. Okay.

8 A. Not through my direct -- as I
9 mentioned before, I was not involved in
10 the -- in the writing of the terms of use
11 or dissemination of it or, you know, those
12 kinds of things.

13 Q. What research did you do to
14 compile this document?

15 A. Talking to the staff that was
16 involved in the drafting of the terms of
17 use and then also some members of the data
18 team who put together the data that's
19 included in it.

20 Q. And who did you talk to that was
21 involved in the drafting of the terms of
22 use?

23 A. Roni, Yarden, Ron Deutsch,
24 Joseph. I think that's it.

25 Q. And who did you talk to on the

100

1 data team to pull the information?

2 A. So there are a couple people on
3 emails, like V.J. and Zaryn.

4 Q. V.J. Do you know V.J.'s last
5 name?

6 A. V.J. is an abbreviation for
7 Victor Vesnaver. I don't know where the J
8 comes in. It must be a middle initial.

9 Did you get the last name or --
10 Victor -- he goes by V.J. inside the
11 company. I'm sure we can get you that.

12 And then Zaryn is the guy on his
13 team. So V.J. runs corporate strategy, and
14 also the data team reports to him.

15 Q. And when you -- when you -- did
16 you ask these individuals to give you
17 specific information?

18 A. Did I ask them to give me
19 specific information?

20 I asked them questions about the
21 terms of use. I asked them about the
22 information that they had shared with
23 Kirkland for the drafting of this
24 declaration.

25 And I reviewed the documents --

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1 the actual terms of use, and I reviewed the
2 data that was collected by the data team.

3 Q. And did you review that
4 information after this declaration was
5 drafted or before?

6 MS. BRIER: And, Oren, to the
7 extent that any of this -- you can
8 answer. But don't get into discussions
9 that you had with counsel about the
10 substance.

11 THE WITNESS: I believe it was --
12 I believe it was after it was the first
13 draft.

14 BY MR. COLODNY:

15 Q. And did you add anything to this
16 declaration based off of those discussions?

17 A. I don't remember the specific
18 redlines that I had, but I don't remember
19 there being any kind of material
20 differences from the information that I
21 collected and what was in here -- what was
22 in the final declaration.

23 Q. And other than discussions with
24 other members of Celsius and data that was
25 pulled by others from Celsius's records,

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1 are there any other sources of information
2 that you relied on to draft this
3 declaration?

4 A. Just as a kind of sanity check,
5 because I'm -- you know, one of the
6 things -- one of the reasons that we got
7 involved in some of the declarations is
8 just to try to make sure that we're giving
9 the most accurate information we can.

10 Because a lot of people in the
11 company have left. And I've been here
12 since February 2021, so relatively
13 speaking, I didn't, you know, usually
14 find -- find the answer to questions.

15 So as a sanity check, I also went
16 back to my personal email as a customer and
17 just verified that I saw some of the --
18 some of the -- some of the notices since I
19 became -- you know, from the time that I
20 became a customer.

21 Q. So you looked at your personal
22 email box to check to see if the notices
23 and the screenshots that were attached, you
24 received them?

25 A. Exactly. You know, this says

103

1 that this went out. Does this look exactly
2 like what I received and confirmed it that
3 way.

4 Q. Okay. Can you turn to page 14 of
5 this document. Actually, I guess I might
6 have been referring to a paragraph number.

7 Yeah, paragraph 14. It's on page 5 at the
8 bottom.

9 A. Okay.

10 Q. Looking at the chart
11 specifically.

12 A. Okay. Got it.

13 Q. So my understanding of this chart
14 is that the percentages would be the number
15 of accountholders or percent of
16 accountholders that saw that version when
17 they signed up for Celsius; is that
18 correct?

19 A. Yeah. And I don't know --
20 actually, can I restate that?

21 So this is the number -- the
22 percentage of customers who -- when they
23 registered, what version of the terms of
24 use were in effect.

25 So, for example, at the time

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1 45 percent of our customer base registered,
2 Version 5 of the terms of use were in
3 effect.

4 Q. Right. So if I add up Version 6,
5 7 and 8, I think it's 45 percent --
6 44 percent registered for a version of the
7 terms of use Version 6 or later, correct?

8 MS. BRIER: Objection to form.

9 THE WITNESS: Yeah, I'm sorry.

10 Can you say that again?

11 BY MR. COLODNY:

12 Q. Yeah, I'm just adding up. So I'm
13 looking at Version 6, 7 and 8, and, you
14 know, my understanding from this table is
15 that those numbers, when added together,
16 equal, I think it's 44 percent.

17 And those 44 percent of people
18 would have only seen Version 6, 7 or 8?

19 MS. BRIER: Objection to form.

20 THE WITNESS: I believe that
21 that's the case. And just to make sure
22 I'm understanding, so you understand
23 that the 45 percent, for example, that
24 when they register a software Version 5
25 would have been presented with

105

1 Version 6, 7 and 8 subsequently.

2 But, yes, what you said is right.

3 BY MR. COLODNY:

4 Q. And where did you get the
5 information to populate this table?

6 A. From the data team. We have a
7 back office system that tracks when users
8 accept terms.

9 Q. Uh-huh.

10 A. And so they just report it on
11 that. They went to the data base that
12 stores that information and reported on it.

13 Q. And this is the current
14 accountholders as of the petition date, the
15 percentage that saw the different terms of
16 use when they first signed up? I'm just --

17 A. Correct. Correct.

18 Q. So I think we talked about this a
19 little bit before, but attached to your
20 declaration are a lot of screenshots that
21 talk about the -- what was shown to people
22 when you resolicited Version 6, right?

23 A. (No audible response.)

24 Q. And that was only shown to people
25 that were existing Celsius users when

106

1 Version 6 was rolled out, correct?

2 MS. BRIER: Objection to form.

3 THE WITNESS: Sorry. Could

4 you...

5 BY MR. COLODNY:

6 Q. Yeah. If you just want to look
7 at the back to the exhibits. I think that
8 you list as Exhibit A what you title
9 "Phase 1 Communications," and Exhibit B is
10 "Phase 2 Communications," and Exhibit C, I
11 think is "Phase 3 Communications." And
12 maybe they're all in one exhibit.

13 But these are all communications
14 that were sent to individuals that had
15 agreed to Version 5, and now you're trying
16 to resolicit Version 6, correct?

17 A. Correct. Yeah, I mean, it could
18 have been people who had not accepted
19 previous versions of the terms of use as
20 well. Like, they could have skipped a
21 version. But as long as they didn't --
22 but, yeah, what you said is right.

23 Q. So if I was a user and I signed
24 up for the first time with Version 6, would
25 I have seen any of these communications?

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1 MS. BRIER: Objection to form.

2 THE WITNESS: Would you have seen
3 these if you had already signed up?

4 Yeah. As one of -- I mean, as
5 long as one of these exhibits is
6 related to Version 7 or 8, then, yes.

7 BY MR. COLODNY:

8 Q. Well, that's my question. I
9 couldn't find anything relating to
10 Version 7 or 8.

11 A. Maybe just give me a few minutes
12 to review this.

13 (Pause for reading/reviewing.)

14 A. So your question is if you had
15 signed up for Version 6 -- if you had
16 signed up when Version 6 was effective,
17 would you have received these emails?

18 Q. Right.

19 A. That is -- let me double-check.
20 Let me just recheck this and refresh my
21 memory.

22 (Pause for reading/reviewing.)

23 A. So, yeah, yeah. So customers
24 would have seen -- they would have been
25 notified, and you can kind of piece that

108

1 together also just by looking at the -- at
2 the percentage of people who accepted
3 Version 7.

4 Q. But what -- what screen would the
5 people have seen Version 7 look at?

6 A. What screen would they have
7 looked at?

8 Q. Right. Because I think that the
9 attachments all are of notices that were
10 pushed out to people who had seen
11 Versions 5 through 1, and now you were
12 resoliciting 6.

13 So I guess I'm looking at what
14 login screen or solicitation --

15 A. Uh-huh.

16 Q. -- would someone for the first
17 time saw Version 6, have seen?

18 MS. BRIER: Objection to form.

19 And is your question whether the
20 folks who signed up for 6 or later
21 would have seen the notifications about
22 changes to Version 6?

23 MR. COLODNY: Well, that's the
24 first question.

25 ///

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1 BY MR. COLODNY:

2 Q. And then my second one is, how am
3 I to know what the people -- the 45 percent
4 of people that saw Version 6, 7 and 8 saw,
5 because all I've been provided with is the
6 notice of changes between Version 5 and 6.

7 A. Yeah, if you can just give me a
8 minute to review, to review this again.

9 (Pause for reading/reviewing.)

10 A. Yeah, I'm not sure if this is
11 your -- so, like, the effective periods
12 for -- which were noted on page 4, you
13 know, for Version 6, July 22 through
14 August 2 of 2021, and that -- and then the
15 change to Version 7 took place on August 3,
16 2021, which is in the -- which would have
17 fallen in between Phase 1 and Phase 2.

18 Q. But, again, those people that
19 signed up between Version 6 and 7, they
20 wouldn't have gotten a notice that said,
21 here are the changes to Version 5, because
22 they would have never seen Version 5,
23 right?

24 MS. BRIER: Objection to form.

25 THE WITNESS: If they sign up

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1 between Version 6 -- between Version 5
2 and 7?

3 BY MR. COLODNY:

4 Q. 6 -- like --

5 A. I mean, Version 6 lasted for, you
6 know, between July 22 --

7 Q. Right. I understand that
8 Version 6 and 7 were, like, minor changes,
9 right?

10 A. Yep.

11 Q. Updates to -- over a period of
12 time.

13 What I'm trying to get at is
14 we've got a lot of screenshots that were
15 provided to show the resolicitation of
16 Version 6.

17 A. Uh-huh.

18 Q. But this chart shows that
19 44 percent of people signed up after
20 Version 6 was enacted. And I don't believe
21 there are any screenshots or descriptions
22 that show what those 44 percent of users
23 would have seen.

24 MS. BRIER: Objection to form.

25 THE WITNESS: Yeah, I don't know.

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1 I mean, we could go back and try to
2 find -- yeah, get that information if
3 it's different from what's here.

4 But, again, just going -- going
5 back to my -- my understanding of,
6 like, the events that happened at that
7 time and also what's described here in
8 the Phase 1, Phase 2 and Phase 3, you
9 know -- yeah, it says here even in
10 Phase 3, "Phase 3 communications
11 continued to request acceptance of
12 terms of use Version 6 and notified
13 accountholders that they would regain
14 access to Debtors' services upon" --

15 (Stenographer asks speaker to
16 speak slowly and clearly.)

17 THE WITNESS: Sorry about that.

18 I'm reading the last paragraph of
19 section that starts with Phase 3, the
20 last sentence.

21 So "Phase 3 communications
22 continued to request acceptance of
23 terms of use Version 6 and notified
24 accountholders that they would regain
25 access to the Debtors' services upon

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1 acceptance."

2 And so the question you're asking
3 is, at what point did we update --
4 well, actually, we can see at what
5 point we updated the terms of use. It
6 was on August 3.

7 And you're asking if there -- if
8 these screenshots reflect -- just make
9 sure I'm understanding this -- you're
10 asking do the screenshots reflect the
11 Version 6 or Version 7?

12 BY MR. COLODNY:

13 Q. I'm asking where's the screenshot
14 that a new user would see if they first
15 signed up to Version 6?

16 A. If that's not -- yeah, if that's
17 not something we provided, then we should
18 be able to get that to you.

19 Q. Okay. I would appreciate that.

20 But you're not aware of anywhere
21 in this declaration where it shows the
22 screenshot that a new user that signed up
23 for Version 6, Version 7 or Version 8 saw?

24 A. It doesn't look like it.

25 MS. BRIER: Objection to form.

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1 BY MR. COLODNY:

2 Q. How did you go about grabbing
3 these screenshots?

4 Because I -- yeah. How did you
5 gather these screenshots?

6 A. We asked a variety of staff at
7 the company for copies of the -- I mean, it
8 depends on the type of content. So for
9 the -- for screenshots of the app, we would
10 have probably gone to -- most likely we
11 would have received the information from
12 either our design team or product team.

13 For emails, we would have gone to
14 our marketing -- marketing or
15 communications team, yeah.

16 Q. And are these -- I guess one of
17 the -- there's -- if you could turn to
18 page 16 at the top. I'm looking at the
19 numbers that are right below --

20 A. Okay.

21 Q. -- in the top strip. It says
22 "Beta Pop-Up Communications."

23 What is -- is this the screen
24 that users actually saw, or what is meant
25 by "beta pop-up communications"?

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1 A. What I've seen happen at Celsius
2 sometimes is that there are screens that
3 are designed during the product development
4 process. They may be worked on by the
5 product team, the design team. The
6 regulatory team might review them.

7 For example, in this app called
8 Figma, those things can be -- generally
9 that Figma file is passed to our
10 engineering team to implement, you know, to
11 code up what they see.

12 There are times where there are
13 minor changes in between what is in that
14 Figma file and what is actually pushed to
15 production. Usually it's around, like --
16 it's either -- you know, there might be
17 typos corrected or typos introduced during
18 that -- you know, that handoff.

19 But in kind of the form and
20 substance, they should be identical.

21 Q. So are you -- is it your
22 testimony that this is, in form and
23 substance, what users who saw the pop-up
24 screen saw?

25 A. Correct.

115

1 Q. And what did you do to make sure
2 that was correct?

3 A. I spoke with the same collection
4 of people. I didn't actually need to talk
5 to the data people, but speaking with our
6 regulatory and legal staff on -- to confirm
7 that.

8 Q. Okay. So going back to new
9 users, and I want to segment that from
10 existing users.

11 Were new users provided with the
12 full terms of use when they signed up for a
13 Celsius account?

14 A. Yes, to the best of my
15 understanding.

16 Q. How were they provided with that
17 terms of use?

18 A. It was presented to users during
19 the sign-up process.

20 Q. How was it presented to them?

21 A. As a -- it's a screen in the app
22 as they're -- as they're completing the
23 registration process, there's generally a
24 hyperlink to a page with the full text.

25 Yeah, it's pictured on page 18.

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1 At the bottom, it's called A-9. So
2 something similar to, like, what you see
3 there with the hyperlink, terms of use and
4 private policy.

5 Q. Okay. This is -- this is the
6 updated you're saying --

7 A. This is the updated, but it's a
8 similar type of interface.

9 Q. So there will be a pop-up, and
10 there will be a hyperlink to the terms of
11 use?

12 A. Yes. That's my understanding.

13 Q. And if you click on that
14 hyperlink, does it take you to the full and
15 current terms of use?

16 A. That's my understanding.

17 Q. And what is that understanding
18 based on?

19 A. With discussions with staff.

20 Q. What discussions with staff?

21 A. With the regulatory and legal
22 team. Just discussing -- discussing how
23 that process worked. It's also from my own
24 recollection of signing up was how it
25 worked.

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1 Q. Did Celsius email users the
2 entire terms of use?

3 A. I don't -- I don't remember. I
4 don't think so.

5 MS. BRIER: And I would object to
6 the form of that question.

7 BY MR. COLODNY:

8 Q. Did Celsius ever email users the
9 entire version of the terms of Version 6 of
10 the terms of use?

11 MS. BRIER: Object to form.

12 THE WITNESS: Can you just give
13 me one minute to review?

14 BY MR. COLODNY:

15 Q. Uh-huh.

16 (Pause for reading/reviewing.)

17 MS. BRIER: And, Aaron, to
18 clarify, are you asking whether they
19 emailed the entire document or a link
20 to it or both?

21 MR. COLODNY: My question was
22 generally.

23 MS. BRIER: Okay.

24 (Pause for reading/reviewing.)

25 THE WITNESS: Yeah, so I don't

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1 remember -- sorry. I don't think that
2 we emailed the full terms of use to our
3 customers. I think, you know, it -- as
4 is common across, like, a lot of
5 different platforms in crypto, you're
6 presented with some kind of screen to
7 accept the terms.

8 You can click on it to review the
9 full text, and then it's kind of at
10 your -- it's on the customer to -- to
11 collect a copy of that.

12 And just speaking from my own
13 knowledge, when I did -- you know, I
14 talked about reviewing competitor
15 platforms, you know, you're often
16 copying and pasting, scrolling through
17 apps because the full version is not
18 sent to you.

19 So I think it's a common
20 practice.

21 BY MR. COLODNY:

22 Q. Okay. Did Celsius ever translate
23 the terms of use into another language?

24 MS. BRIER: Objection to form.

25 It's outside the scope.

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1 THE WITNESS: Not to my
2 knowledge. And I think it would.
3 There are, like, some technical
4 challenges -- there would be technical
5 challenges of being able to have it
6 available in different languages.

7 BY MR. COLODNY:

8 Q. So Celsius never provided the
9 terms of use in Spanish, for example?

10 A. Not to my knowledge.

11 Q. Any other language than English?

12 A. Not to my knowledge -- yeah, not
13 to my knowledge.

14 Q. Did Celsius ever send emails to
15 people in any language other than English?

16 MS. BRIER: Objection to form.

17 Outside the scope.

18 THE WITNESS: Yeah, not to my
19 knowledge.

20 BY MR. COLODNY:

21 Q. Okay. Let's go to the
22 resolicitation.

23 Why did Celsius resolicit
24 acceptances to the terms of use for
25 Version 6?

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1 A. Why did -- why did Celsius follow
2 up with customers about accepting the terms
3 of use Version 6?

4 Because it was a material change
5 in -- customers had previously been
6 customers of Celsius, the UK entity, and
7 that was being transferred to the U.S.
8 entity.

9 Q. Did Celsius resolicit acceptances
10 of any other prior version of the terms of
11 use?

12 A. Not to my -- not to my knowledge.
13 And I -- I did -- other than what's
14 represented in the declaration, which is
15 that we tracked acceptance of terms of use
16 by customer, so we knew when a customer
17 accepted or did not.

18 But Version 6 was -- you know,
19 like, as we've kind of outlined in the
20 declaration, it was a pretty material
21 change being that customers were becoming
22 customers of a new entity.

23 That was -- that was, to my
24 knowledge, the main -- really the only time
25 the company really tracked or proactively

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1 reached out to customers -- sorry. That
2 was the first time that the company
3 proactively reached out to customers to
4 track that.

5 Q. So how did it notify customers of
6 the previous changes to the terms of use,
7 terms of use 1 through 5?

8 A. Through in-app notifications
9 and -- in-app notifications and -- and
10 email.

11 Q. And what did those in-app
12 notifications say?

13 A. Something along the lines of, you
14 know, our terms of use are changing. You
15 must accept -- you know, largely similar to
16 what's -- what's shown in these exhibits.

17 Q. But --

18 A. That the terms are changing. If
19 you want to continue to use the app and
20 get, you know, the benefits of being a
21 customer, you need to accept the terms.

22 Q. And did it -- did customers
23 actively have to click "accept" to continue
24 to use the Celsius app for changes in
25 Versions 1 through 5?

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1 MS. BRIER: Objection. Form.

2 THE WITNESS: So my knowledge of
3 the stuff that predates my time at
4 Celsius is a little bit -- you know,
5 it's even more removed.

6 But, you know, just give me one
7 minute to review.

8 Yep, that's correct. Customers
9 would have to -- as indicated in the
10 declaration, customers would have to
11 affirmatively accept the terms of use.

12 BY MR. COLODNY:

13 Q. And where is that in the
14 declaration?

15 A. On page 4, Section C or whatever,
16 "Accountholder Consent Process." At all
17 times, Celsius has required users to
18 affirmatively accept the terms of use prior
19 to and as a condition of accessing
20 Celsius's services."

21 Q. Right. So my question was a
22 little different.

23 It was if you had already
24 accepted one version of the terms of use,
25 how was the new version accepted by

123

1 customers?

2 So say -- say I signed up for
3 Version 1. When Celsius updated the terms
4 of use to Version 2, how was that new
5 term -- version of the terms of use
6 presented to and accepted by users?

7 MS. BRIER: Object to form.

8 THE WITNESS: Yeah. So the
9 bottom of page 5 kind of describes the
10 Debtors -- I mean, that whole
11 Section 15 describes this.

12 But the -- in particular, the
13 last sentence, it says, "The Debtors
14 typically advise existing users of
15 updates of the terms of use by email
16 and other official Celsius channels
17 such as its blog."

18 BY MR. COLODNY:

19 Q. And what's that understanding
20 based on?

21 A. Discussions with -- with staff
22 internally.

23 Q. Who did you have those
24 discussions with to understand that part?

25 A. Yarden, Roni, legal -- our legal

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1 team. So Ron, Joseph, Ofer.

2 Q. I want to flip to page 11 of your
3 declaration. I'm referring to the numbers
4 at the top just for --

5 A. Yep.

6 Q. -- ease of reference because they
7 go through the whole document.

8 What is this email?

9 A. Just take a second to review it.

10 (Pause for reading/reviewing.)

11 A. This is the email to customers
12 telling them about the change in
13 relationship from being customers of the UK
14 entity to the U.S. entity.

15 Q. Okay. So it is the kickoff email
16 to the resolicitation process; is that
17 right?

18 A. Yes.

19 Q. And it highlights three main
20 changes to the terms of use: The one you
21 just mentioned, that the engagements with
22 Celsius Network, a Delaware company; a
23 change of law to New York and disputes to
24 be settled by arbitration.

25 Are you aware of any other main

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1 changes to the terms of use that were
2 between 5 and 6?

3 A. Those are the main changes I'm
4 aware of.

5 Q. And if I were a user and I
6 received this email, how would I view the
7 terms of use?

8 MS. BRIER: Objection to form.

9 THE WITNESS: Well, it actually
10 instructs you to go -- to log into your
11 Celsius account upon which you would be
12 prompted to -- you would be given links
13 to review the terms of use.

14 BY MR. COLODNY:

15 Q. Okay. So I would get this email,
16 open my Celsius account, there would be a
17 pop-up screen, and then I would click on a
18 hyperlink to the terms of use?

19 A. Yeah. Yep. So there's -- you
20 know, on the next page, on page 12, it says
21 there's a button that says "Go to your
22 account."

23 Q. Uh-huh.

24 A. And when go to your account, you
25 would have been presented with some of

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1 these other screens.

2 Q. Right. It would look like

3 page 16, correct?

4 A. Yes.

5 Q. But this email --

6 MS. BRIER: Objection to form.

7 BY MR. COLODNY:

8 Q. But this email alone didn't
9 contain the terms of use or a link to the
10 terms of use?

11 A. It looks like this -- it looks
12 like this email did not. The -- yeah,
13 that's correct.

14 Q. Okay. Are you aware of any
15 discussions at the company considering
16 attaching the terms of use or hyperlinking
17 the terms of use to that email?

18 MS. BRIER: Objection to form.

19 THE WITNESS: I'm not aware.

20 BY MR. COLODNY:

21 Q. Do you know who made the decision
22 to highlight these three terms, or how that
23 decision -- do you know who made the
24 decision to highlight these three main
25 terms?

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1 A. I don't. Yeah, because I wasn't
2 involved in the drafting or this process,
3 you know, firsthand.

4 Q. And based off of looking at this
5 email, are you aware of any other main
6 changes to the terms of use between
7 Version 5 and 6?

8 MS. BRIER: Objection to form.

9 THE WITNESS: I'm not aware of
10 other changes.

11 BY MR. COLODNY:

12 Q. So I want to flip to page 12.
13 So this next email -- actually,
14 strike that.

15 I want to go to page 14. Sorry.

16 So I'm looking at the lines below
17 the "Monday rewards email" reminder.

18 Do you know -- so this is an
19 email that customers received on Monday
20 with their Celsius rewards that provided a
21 reminder about the terms of use update,
22 correct?

23 A. Correct.

24 Q. Do you know what screen popped up
25 when you clicked the "read more" hyperlink?

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1 A. I don't -- I don't know that
2 offhand. I can try to get that information
3 for you, but I don't know offhand.

4 Q. Okay.

5 A. Yeah. My guess would be that it
6 would take you to the blog article. But,
7 you know, I'd have to confirm that.

8 Q. And which blog -- did you provide
9 the blog article in the declaration?

10 A. I think that there's a reference
11 to it, yeah, on page 12 -- 12.

12 Q. So it would take you -- you think
13 it would take you to this blog that starts
14 at the bottom of page 12 and runs through
15 to 13?

16 A. Correct.

17 Q. But there's no hyperlink or copy
18 of the terms of use attached to that blog,
19 correct?

20 A. That's correct. I don't see a
21 link to -- I don't see something that looks
22 like a link to that. But instead, there's
23 a link to taking customers to their account
24 upon which they would be presented with the
25 terms of use.

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1 Q. Now, I think it was Footnote 4 of
2 your declaration.

3 You talked about the concept that
4 we discussed earlier about this being kind
5 of a beta mock drafts and say, "It is
6 evident from looking at these mock-ups
7 where items remained in draft form."

8 What did you mean by that?

9 MS. BRIER: Object to form.

10 THE WITNESS: Yeah. I'm sorry.

11 Can you repeat that?

12 BY MR. COLODNY:

13 Q. Sure.

14 On Footnote 4 of your
15 declaration, and I -- it's on page 6 if you
16 want to orient yourself. And that's --
17 sorry to jump around. It's 6 at the
18 bottom.

19 MS. BRIER: I think he's still on
20 the declaration.

21 THE WITNESS: Yeah, okay.

22 [Speaking sotto voce]

23 I'm sorry. What was the
24 question?

25 ///

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1 BY MR. COLODNY:

2 Q. So you say it was evident from
3 these mock-ups where items remain in draft
4 form. I was wondering what are you
5 referring to with respect to the mock-ups
6 that are drafts versus final?

7 I guess I will ask the question a
8 little more directly.

9 There's a couple places in these
10 where it indicates, for instance, insert
11 first name or has a date in brackets.

12 Are those the changes you were
13 referring to, or are there other draft
14 changes in here that got changed before the
15 final?

16 A. I mean, like, the guy on page 17
17 who is pictured, Andrew, is the stock
18 photography guy, right? I mean, that's,
19 like, the image that we use in all of our
20 mock-ups, that's how I know this is a
21 mock-up.

22 And those little -- that decision
23 tree on the top, this is often, like, when
24 we're mocking up kind of sequencing or
25 customer workflows. That's -- we'll put

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1 the actual screens in the kind of decision
2 tree. So that's what tells me that this is
3 a mock-up.

4 Q. But other than that, there's no
5 evident changes to the language of the
6 popup screens or other things that changed
7 between the drafts and final?

8 A. It wasn't -- yeah, it wasn't
9 material. I mean, when I reviewed this at
10 the time of submitting the declaration, it
11 was -- it was in line with, like, the --
12 you know, kind of the whole form and
13 substance of what we were trying to convey.

14 Q. Okay. Did Celsius ever make a
15 redline available to customers that would
16 show the changes between Version 5 and 6?

17 MS. BRIER: Object to form.

18 THE WITNESS: So, like you said,
19 I think the closest thing to that
20 was -- was the kind of cull -- pulling
21 out kind of the material changes in the
22 bullet points that we were just talking
23 about a second ago about, like, the
24 material changes.

25 But, yeah, to my knowledge, we

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1 did not provide a redline.

2 BY MR. COLODNY:

3 Q. So other than those three bullets
4 that identified the material changes, did
5 Celsius identify or provide users with a
6 way to see the changes between Version 5
7 and Version 6?

8 MS. BRIER: Object to form.

9 THE VIDEOGRAPHER: Pardon me,
10 Counsel. Do you mind if we go off the
11 record for the Media Unit real quick?

12 MR. COLODNY: Sure.

13 THE VIDEOGRAPHER: Okay. The
14 time currently is 12:10 p.m., and we're
15 going off the record for Media Unit
16 No. 1.

17 This is the end of Media Unit
18 No. 1.

19 (Whereupon, a recess was taken at
20 12:10 p.m.)

21 THE VIDEOGRAPHER: All right.

22 The time is currently 12:11 p.m. This
23 is Media Unit No. 2 of today's
24 testimony.

25 And we are back on the record.

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1 MR. COLODNY: Could you read back
2 the last question?

3 (The following question was read
4 back:

5 "QUESTION: So other than those
6 three bullets that identified the
7 material changes, did Celsius
8 identify or provide users with a
9 way to see the changes between
10 Version 5 and Version 6?")

11 MS. BRIER: Same objection.

12 THE WITNESS: Yeah, not to my
13 knowledge, other than those bullet
14 points and prompts to the user to, hey,
15 pay attention, you know, don't skip
16 reading this. That was the -- I think
17 my understanding is that's the extent
18 of it.

19 BY MR. COLODNY:

20 Q. Okay. You attached a bunch of
21 different communications to users in
22 connection with this Version 5 and
23 Version 6.

24 Are you aware of any other
25 communications that Celsius sent to all

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1 users with respect to the resolicitation of
2 Version 5 and 6 other than those included
3 in your declaration?

4 A. None that I'm aware of. And,
5 yeah, like I mentioned earlier, I checked
6 my personal emails as a customer just to
7 see if I received anything around that
8 time, and I didn't see anything.

9 Q. And was the change in the terms
10 of use published on Celsius's website too?

11 A. Yes.

12 Q. How was it published on Celsius's
13 website?

14 A. My understanding is that every
15 time we had a change to our terms of use,
16 the latest version was posted in a link
17 that says "terms of use" on the home page.

18 Q. So just the general link at the
19 bottom of the home page where you clicked
20 to view the terms of use?

21 A. Correct.

22 Q. Any other place on the website
23 that you're aware of?

24 A. So when you talk about the
25 website -- the website is, like, where

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1 customers could also access the web app.

2 I'm trying to remember -- yeah, I think at
3 that time, the web app was -- yeah, the web
4 app would have been available.

5 So it could have been -- a
6 customer could have seen that through --
7 through -- if they logged in, you know,
8 through the website to the web app.

9 Q. I think I'm understanding, but --
10 so there's a website that's the Celsius
11 website?

12 A. Yep.

13 Q. And then that allows you to
14 access the web app, which is where a
15 customer would log in to perform
16 transactions, see their balance --

17 A. Correct.

18 Q. -- that's the distinction you're
19 drawing?

20 A. Correct.

21 Q. So on page 18 -- and I'm
22 referring to the top numbers again. This
23 is a screenshot of what people would see in
24 the web browser for the change from
25 Version 5 to Version 6, correct?

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1 A. That's correct.

2 Q. Was -- is this different -- I
3 guess how is this different from what
4 people would see in the -- turning back to
5 page 16, the beta communications in-app
6 screen?

7 And I'm not talking about the
8 content. Just why was one screen shown on
9 in-app and one on a web browser?

10 A. I mean, my understanding is that
11 the substance of the -- of what's shown
12 should have been the same. It was just a
13 matter of the platform.

14 So when we say "in-app," what
15 really that means is in mobile app --

16 Q. Okay.

17 A. -- versus page 18, this is on the
18 web app.

19 Q. So when you're designing
20 something, there's a different kind of
21 coding for mobile versus desktop?

22 A. That's correct, yep.

23 Q. And if I look at the third bullet
24 of this web browser, it says -- it lists:
25 "These are not all the changes. Please

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1 read the update terms of use in full."

2 There's a colon. It says, "Change of legal

3 entity, change of governing law and dispute

4 resolution," and then the last bullet is,

5 "Change of custody services. Assets shall

6 not be" -- "will not be held with Prime

7 Trust but will be loaned to Celsius in

8 exchange for weekly rewards."

9 Do you see that?

10 A. I do see that.

11 Q. So why is that bullet different

12 than what users were shown in the mobile

13 app?

14 A. So my understanding is that

15 this -- customers who would have seen

16 this -- the only customers that had assets

17 that would have been held by Prime Trust

18 would have been customers based in New York

19 or Washington.

20 So I'm not -- again, actually, I

21 didn't check on this point about -- yeah,

22 about whether -- yeah, actually, I don't --

23 I don't think that we actually have the

24 ability to filter based on -- I'm not sure,

25 actually.

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1 So, yeah, I can't answer that
2 question. I'd have to ask -- I'd have to
3 consult with some other people internally
4 to get you that answer.

5 Q. But you believed that this web
6 browser screen was shown to all users, not
7 just those in New York and Washington?

8 MS. BRIER: Object to form.

9 THE WITNESS: That's what I would
10 have to -- yeah, I'd have to confirm
11 that before I gave you that answer.

12 BY MR. COLODNY:

13 Q. You don't know if this was shown
14 to all users or just users in New York and
15 Washington?

16 A. That's the part that I would want
17 to -- you know, try to do my best to -- you
18 know, speak with other people internally to
19 confirm that.

20 Q. That's fine. Just asking for
21 what you know today.

22 A. That's right.

23 MR. COLODNY: Can I get 21.

24 (Whereupon, Exhibit 8 is marked
25 for identification.)

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1 MR. COLODNY: This is Exhibit 8.

2 MS. BRIER: Exhibit 8, thank you.

3 MR. COLODNY: For the record, we
4 discussed with Debtors' counsel before,
5 this is a court document or a portion
6 of a court document, and it's listed as
7 Exhibit A-5 to A-6 redline. It's the
8 redline of terms of use Version 5 to
9 terms of use Version 6.

10 This is only a portion of the
11 full document that was filed with the
12 Court, but we provided Debtors' counsel
13 with the opportunity to look through
14 it. They have no objection to us
15 introducing this portion.

16 Grace, I can introduce the whole
17 deck in too, but just putting this in
18 for people to be able to flip through
19 it a little easier than a
20 thousand-page --

21 MS. BRIER: Yeah, no objection
22 from my perspective. We -- I reviewed
23 this. It looks complete.

24 We're reserving the right to
25 object to the extent that we find out,

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1 you know, it might be missing a page or
2 something at a later date.

3 MR. COLODNY: That's fine.

4 BY MR. COLODNY:

5 Q. So what you have in front of you
6 is an attachment to the declaration of Alex
7 Mashinsky that you reference in your
8 declaration. And it is showing a redline
9 of terms of use Version 5 to terms of use
10 Version 6.

11 Have you reviewed this document
12 before?

13 A. I definitely, like I mentioned
14 before, reviewed -- reviewed the Mashinsky
15 declaration. And I'm aware of it to the
16 extent that anybody can be aware, you know,
17 keep in their mind 1100 pages of content.

18 But, yeah, I would have seen this
19 because I scrolled through the entire
20 document.

21 Q. So I'll help -- try to move
22 through it quickly, because, agree, it's a
23 long document.

24 On page 1, you'll see Celsius
25 Network Ltd. has been crossed out, and now

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1 it is Celsius Network LLC and its
2 affiliates, collectively we, our, us and
3 Celsius.

4 Was this one of the main changes
5 that you referred to in the previous
6 screen?

7 A. That's correct.

8 MS. YANEZ: Objection. Form.

9 BY MR. COLODNY:

10 Q. And then if you look at the next
11 page, the second full paragraph in all bold
12 and capitalized letters, it says, "Celsius
13 is a lending and borrowing platform. When
14 you transfer digital assets to Celsius,
15 those digital assets are a loan from you to
16 Celsius in accordance with the terms
17 hereof. Under no circumstances does
18 Celsius hold digital assets in custody or
19 on behalf as a part of the services
20 governed by these terms."

21 Are you aware of any time before
22 this terms of use where Celsius described
23 the transaction between its users and it as
24 a loan?

25 A. I would have to go back and

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1 review those again. But, yeah, from -- off
2 the top of my head, I'm not aware of that,
3 yeah.

4 Q. Do you think it's material that
5 the transaction changed to be a loan?

6 MS. BRIER: Object to form.

7 THE WITNESS: I don't think
8 it's -- yeah, that's not my -- that's
9 kind of not my area. So I don't think
10 my -- my -- I'm not really qualified to
11 weigh in on that.

12 BY MR. COLODNY:

13 Q. Do you think that as a customer
14 of Celsius, this would have jumped out at
15 you from the new terms of use?

16 MS. BRIER: Object to form.

17 THE WITNESS: I think that
18 because it's bolded and underlined, it
19 certainly would jump out to someone.

20 So, yeah.

21 BY MR. COLODNY:

22 Q. And prior to this version, are
23 you aware of Celsius considering the
24 transaction between it and its
25 accountholders to be a loan?

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1 A. I wasn't really --

2 MS. BRIER: Objection to form.

3 Sorry, Oren. You can answer.

4 THE WITNESS: Yeah, I wasn't
5 really part of the group of people that
6 was considering, like, the regulatory
7 or legal implications of the terms of
8 use; so...

9 BY MR. COLODNY:

10 Q. Okay. I want to turn to page --
11 it's 327 at the top.

12 So here Celsius changes the term
13 "Celsius wallet" to "Celsius account."

14 Do you know why that change was
15 made?

16 A. I don't know. I don't know.

17 Q. Are there any specific wallets
18 associated with the earn service? I guess
19 strike that.

20 Do customers have a specific
21 wallet at Celsius linked to their account
22 in connection with the earn service?

23 MS. BRIER: Objection to form.

24 THE WITNESS: So all customers
25 are given a deposit address, which

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1 is -- so people will commonly call that
2 a wallet. That deposit address is kind
3 of the -- the initial lending place of
4 all digital assets that are sent to the
5 company.

6 And that's the extent of a
7 distinct or separate or a
8 customer-specific wallet or address
9 that Celsius maintains for customers.

10 BY MR. COLODNY:

11 Q. And then what happens once you
12 deposit your coins to that
13 customer-specific wallet?

14 A. Depending -- depending on the
15 volume or the amount of cryptocurrency,
16 periodically that cryptocurrency is swept
17 into main -- other wallets inside the
18 company, pooled omnibus wallets.

19 Q. Okay. But there's -- so there's
20 no specific wallet that holds an
21 individual's assets in the earn program?

22 A. Yeah, again, like the --
23 there's -- the way -- I talked about this
24 in my custody declaration was that, you
25 can -- a helpful way to think about this is

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1 that there is what the customer could see
2 via the app, and there's the coin movement.

3 And this is a common -- a common
4 practice across the industry. There's a
5 ledger that is maintaining the balance that
6 the customer is shown, and then there's the
7 actual underlying asset. This is common in
8 traditional finance and in crypto.

9 And so your question was -- your
10 question was --

11 BY MR. COLODNY:

12 Q. I can ask another question.

13 A. Yeah.

14 Q. So you say there's -- is your
15 understanding that what the customer would
16 see, is that the Celsius account as it's
17 defined in this terms of use?

18 So when I open up the app and I
19 see Aaron Colodny has three Bitcoin, that's
20 not kept in an Aaron Colodny wallet within
21 Celsius?

22 A. That is correct.

23 Q. But my Celsius account would say,
24 three Bitcoin?

25 MS. BRIER: Objection to form.

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1 THE WITNESS: Yeah, so to -- so,
2 yeah, just going back to that split.

3 What you see in your app is a
4 representation of what we maintain on a
5 ledger of transactions. Where the
6 coins actually sit and whether they're
7 in the customer-specific wallet or the
8 omnibus pooled wallet, what we call the
9 main wallet, totally separate and
10 distinct.

11 So you may have -- if you put in
12 three Bitcoin, those three Bit -- and
13 those are your only Bitcoin -- for a
14 period of time those three Bitcoin may
15 sit in your individual wallet or the
16 add deposit address, but they could
17 just as easily be -- have been swept,
18 you know, a second after you deposited
19 them to the main wallet.

20 So that's why we don't refer --
21 we don't connect your view of your
22 balance to where the coins are sitting
23 in our infrastructure. We tie that to
24 the -- our tracking of your balances in
25 the ledger.

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1 BY MR. COLODNY:

2 Q. And so your Celsius account would
3 be your ledger balance?

4 A. Correct.

5 Q. And was a Celsius wallet a
6 different thing prior to Version 6?

7 MS. BRIER: Objection to form.

8 THE WITNESS: I don't -- yeah, I
9 don't know the -- I don't know the
10 reasoning why they decided to change it
11 from wallet to account.

12 BY MR. COLODNY:

13 Q. Could you turn to page 351 at the
14 top.

15 A. I'm sorry. What was the page?

16 Q. 351 at the top, the docket
17 stamps.

18 A. Got it.

19 Q. So if you look at the title,
20 "Celsius Removes" -- "Consent to Celsius'
21 Use of Your Digital Assets," and changes it
22 to "Consent to Celsius' Use of Digital
23 Assets."

24 Do you know why "your" was taken
25 out of the title?

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1 MS. BRIER: Objection to form.

2 THE WITNESS: Yeah, don't have
3 firsthand knowledge. I mean, I wasn't
4 involved in the drafting of it, but,
5 you know, it's -- it's obviously more
6 clear, you know, based on the other --
7 the other terms of use if -- that
8 customers are transferring their assets
9 to the company, so there -- they
10 wouldn't be the customer's assets.

11 BY MR. COLODNY:

12 Q. Okay. And, again, three
13 sentences down -- or three lines down -- I
14 am sorry -- it says -- well, I'll read the
15 whole thing.

16 "In consideration for the rewards
17 payable to you on your Celsius account and
18 the use of your services, you grant
19 Celsius, subject to the applicable law and
20 for the duration of the period during which
21 the eligible digital assets are loaned to
22 us through your Celsius account, all right
23 and title to such digital assets," and it
24 continues.

25 Do you know why there was a

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1 change from "available" to "loaned to us"?

2 MS. BRIER: Object to form.

3 THE WITNESS: I don't know.

4 Yeah, I don't know the reason why

5 they -- that change was made.

6 BY MR. COLODNY:

7 Q. Two more changes to this
8 paragraph on the next page, 352 at the top.

9 There's a change where it previously said,
10 "You may not be able to exercise certain
11 rights of ownership" to "You will not be
12 able to exercise rights of ownership."

13 Do you know why that change was
14 made?

15 A. I don't know.

16 Q. And then the last romanette iii,
17 there is a change where it introduces now a
18 bankruptcy disclaimer that says that a
19 customer "may lose its rights to recover or
20 regain ownership of such digital assets and
21 other than your rights as a creditor of
22 Celsius under any applicable laws, you may
23 not have any legal remedies or rights in
24 connection with Celsius' obligations to
25 you."

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1 Do you know why that change was
2 made?

3 MS. BRIER: Object to form.

4 THE WITNESS: I don't know.

5 BY MR. COLODNY:

6 Q. So we talked about the Coinbase
7 disclosure before where they disclosed in
8 their 10-Q that there was now a bankruptcy
9 risk disclosure with respect to the
10 ownership ability to recover assets in
11 accounts on the Coinbase site that was
12 highlighted for users in the 10-Q.

13 Are you aware of any
14 communication where Celsius highlighted
15 sub-romanette iii for its customers?

16 A. I'm not aware.

17 Q. And it wasn't listed on the three
18 main changes to the terms of use we
19 discussed before, correct?

20 A. That's correct.

21 Q. Are you aware of any
22 communications discussing flagging these
23 changes in paragraph 13 for accountholders?

24 MS. BRIER: Objection to form.

25 THE WITNESS: Am I aware of any

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1 communications where we tried to make
2 sure our customers were aware of this,
3 the changes? That was the question?

4 BY MR. COLODNY:

5 Q. I was asking a slightly different
6 question.

7 Are you aware of any
8 conversations within Celsius when Version 6
9 was released where people considered
10 flagging these changes for customers?

11 MS. BRIER: Objection to form.

12 THE WITNESS: No. And just to
13 provide more con- -- you know, just as
14 a reminder, like, at the time that
15 these -- these changes were being
16 considered or were implemented, I was
17 head of innovation. So I wouldn't have
18 been involved.

19 It makes even more sense, like,
20 why I wouldn't have been involved
21 firsthand in it.

22 BY MR. COLODNY:

23 Q. But you're not aware one way or
24 another if those conversations did or did
25 not happen?

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1 A. The part -- the thing that I am
2 sure that they happened among counsel --
3 you know, among the attorneys for the
4 company. So -- but I was not a part of
5 those discussions. And, yeah.

6 MR. COLODNY: I'm at a pretty
7 good breaking point if you want to take
8 a break now?

9 MS. BRIER: Okay. Sounds good.

10 MR. COLODNY: Five minutes?

11 MS. BRIER: Do you want to break
12 for lunch or --

13 THE STENOGRAPHER: Do you want to
14 go off the record for this?

15 MS. BRIER: Yeah, let's go off
16 the record. Yes.

17 THE VIDEOGRAPHER: All right.

18 The time is currently 12:33 p.m., and
19 we are going off the record for Media
20 Unit No. 2 of today's testimony.

21 (Whereupon, a recess was taken at
22 12:33 p.m.)

23 THE VIDEOGRAPHER: All right.

24 The time is currently 12:44 p.m. This
25 is continuation of Media Unit No. 2 of

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1 today's testimony.

2 And we are back on the record.

3 BY MR. COLODNY:

4 Q. One question to follow up on
5 something we discussed before.

6 So when customers transferred
7 property to the earn program, you said that
8 they transferred title to the earn program.

9 How could they then take out a
10 loan with that property they had
11 transferred being collateral for that loan?

12 MS. BRIER: Objection to form.

13 THE WITNESS: Yeah. So, I mean,
14 the way I -- I don't have these --
15 these terms memorized, but essentially
16 you would be foregoing the rewards that
17 you were -- so let me take a step back.

18 When you transfer title, you do
19 that in exchange for rewards that you
20 receive for giving the company your
21 coins. When you wanted to then borrow
22 funds from the company, you would
23 forego those rewards that you are
24 exchanging your coins for.

25 So you basically give up your

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1 rewards, but then get the ability to
2 borrow coins.

3 BY MR. COLODNY:

4 Q. And what was the collateral that
5 the company was holding?

6 A. The coins that had been
7 transferred to the company already.

8 Q. And where was that collateral
9 held?

10 MS. BRIER: Objection to form.

11 THE WITNESS: Where was it held?

12 In the company's -- you mean,
13 like -- are you asking about, like --
14 like, what wallet?

15 BY MR. COLODNY:

16 Q. Right. When I think about having
17 collateral, you have an asset that you can
18 execute on if someone doesn't repay their
19 loan.

20 Where were the Bitcoins that were
21 held as collateral, using Bitcoin as a
22 general cryptocurrency, for a loan held by
23 the company?

24 MS. BRIER: Object to form.

25 THE WITNESS: Where were they

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1 held? Yeah, I think this is -- this
2 has been discussed, like, many times,
3 like, in other kind of venues. But
4 there's really no material difference
5 between the way coins in earn and coins
6 that were collateral were treated.

7 BY MR. COLODNY:

8 Q. So do you have an understanding
9 of how the company could hold collateral
10 that it didn't actually hold that was
11 deployed?

12 MS. BRIER: Objection to form.

13 THE WITNESS: How could...

14 I mean, the -- it would have
15 been, like, just -- logically, it would
16 be using the same -- the same
17 mechanisms for securing the -- its own
18 assets that it -- that it did for -- I
19 mean, in every other aspects.

20 So, for example, if it were
21 lending it out to an institution, it
22 should have done -- you know, it should
23 have performed creditworthiness check,
24 you know, to make sure it had
25 confidence it would be able to get

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1 those loaned assets back or had
2 sufficient collateral to protect -- you
3 know, to protect against losses.

4 And, I mean, without -- without
5 stepping through each one of those
6 things, like, the company should
7 have -- should have been taking steps
8 to make sure that that collateral
9 was -- was accessible.

10 BY MR. COLODNY:

11 Q. But there was no separate wallet
12 or structure to hold collateral, correct?

13 MS. BRIER: Object to form.

14 THE WITNESS: That is my
15 understanding. We basically -- we went
16 through this kind of in the custody
17 declaration.

18 There was a main wallet, and
19 coins that were held in that main
20 wallet were -- other than the funds
21 that were there on their path to the
22 custody account, were eligible for
23 deployment.

24 BY MR. COLODNY:

25 Q. Is there any way for the company

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1 to trace a coin that was deposited in earn
2 to a specific customer?

3 A. Deposited...

4 So it's, like -- it's -- the
5 other way we can trace. So as they come
6 in, we can -- we know where they came from,
7 obviously. I mean, we know the blockchain
8 address that the coins came from.

9 Once they go into the omnibus
10 wallet, they're pooled, and they're largely
11 fungible. Depends a little bit on the
12 blockchain, if you want to get into the --
13 you know, whether it's an account-based
14 blockchain or a UTXO blockchain.

15 But largely, they're fungible,
16 and you can't distinguish between the
17 coins.

18 Q. So if I, Aaron Colodny, deposited
19 a Bitcoin in 2021 into Celsius, there's no
20 way to point to the coins that Celsius has
21 now and say, that one coin is
22 Aaron Colodny's Bitcoin?

23 A. We --

24 MS. BRIER: Objection to form.

25 THE WITNESS: We treated them as

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1 fungible. So since you used Bitcoin as
2 an example, Bitcoin is UTXO blockchain.
3 So technically every single transaction
4 has a dependency on the prior
5 transaction. So you could trace
6 fractions of your coin.

7 But your -- what started out as
8 your, let's say, three Bitcoin might
9 have been split into millions of
10 fractions of a Bitcoin.

11 And so, yeah, could we trace
12 every fraction of those? It's possible
13 to do that. I mean, that's what the
14 blockchain is for. But practically
15 speaking, that's not how we looked at
16 the coins. We treated them as
17 interchangeable.

18 BY MR. COLODNY:

19 Q. Do you have an idea of what it
20 would take to trace every single coin that
21 was deposited into Celsius to figure out
22 where it ultimately landed?

23 MS. BRIER: Objection to --
24 objection to form.

25 Sorry. Outside the scope.

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1 Go ahead.

2 THE WITNESS: Yeah. I mean,
3 that's only really possible with UTXO
4 blockchains. And so, like, for the
5 vast majority of the assets on the
6 platform were Ethereum-based, ERC-20s,
7 where that's not really realistic. I
8 mean, that's not possible.

9 For the UTXO blockchains, that
10 would be a massive undertaking. I
11 don't know of any -- any CeFi
12 institution that tries to do that.

13 BY MR. COLODNY:

14 Q. And you would be trying to trace
15 millions of -- hundreds of thousands of
16 customers to millions and billions of
17 assets?

18 A. That's right. And, again,
19 just -- you know, so if you have an address
20 that has three Bitcoin, you know, the
21 result -- like, if you -- let's say
22 somebody wanted to withdraw 10 Bitcoin.

23 We might collect the three
24 Bitcoin from the address that you sent it
25 to and then, you know, one other from seven

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1 other addresses to piece that together into
2 10 Bitcoin that we would send to someone
3 who made a withdrawal request.

4 So it's -- yeah, it's very
5 complicated to do that.

6 Q. So you said before that you
7 weren't involved in the product rollout of
8 solicitation of acceptances for Version 6
9 of the terms of use, correct?

10 A. That's correct.

11 Q. And I believe you mentioned that
12 Roni -- and I'm blanking on the
13 individual's name?

14 A. Yarden.

15 Q. Yarden was the head of product --

16 A. Oh, sorry.

17 Q. Not head of product, the product
18 head or -- of the Version 6 rollout?

19 MS. BRIER: Object to form.

20 THE WITNESS: So there was --

21 there was Roni, in his capacity as kind
22 of head of regulatory or the -- you
23 know, the person who kind of -- you
24 know, person at the top of the
25 regulatory.

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1 Yarden was the actual -- his
2 title is head of regulatory, and maybe
3 the person you're talking about is the
4 Matthew de la Fuente, the head of the
5 PMO office, the project management
6 office.

7 BY MR. COLODNY:

8 Q. What do -- what does Celsius'
9 product and QA team use to track the
10 development and processes of a -- of a
11 workstream like the rollout of the terms of
12 use?

13 MS. BRIER: Objection to form.

14 THE WITNESS: So Jira is sort of
15 the main kind off ticketing system.

16 Jira is a software by a company called
17 Atlassian. The engineering team uses
18 Jira to track engineering work and
19 requests.

20 Oftentimes the company uses
21 another piece of software from the same
22 company called Confluence for -- as
23 like a project management tool. So
24 kind of the tool -- those two tools are
25 used for tracking.

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1 I don't know -- my assumption
2 would be that those two tools were used
3 for this rollout, but I'm not certain
4 of that.

5 BY MR. COLODNY:

6 Q. And I think Confluence is the
7 project management. Does that allow you to
8 track QA and tickets throughout the product
9 lifecycle?

10 A. It would actually -- that should
11 be in Jira. Confluence -- you can, like,
12 link Jira to Confluence so that it would be
13 visible in either tool.

14 But, yeah, Jira should be the
15 software where QA would get involved.

16 Q. And are all of the QA records
17 available in Jira?

18 A. To the extent -- yeah, to the
19 extent that they were created, yes, they
20 should be there. That's my understanding.

21 Again, I wasn't involved in the
22 product development process, you know, at
23 that -- you know, at that level of, like,
24 reviewing what the QA team was doing until
25 very recently.

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1 So -- but, yeah, I mean, just
2 from 20 years of product development
3 experience, QA -- the QA process should be
4 documented.

5 We were on our path towards
6 trying to get a SOX audit completed where
7 that would be required; so...

8 Q. Is it generally Celsius' practice
9 to perform QA on any product or project
10 that's released to the public?

11 A. Yes.

12 Q. And what does that QA process
13 entail?

14 A. It should be reviewing the
15 business requirements, reviewing the --
16 reviewing what has been developed in a --
17 in a testing environment, in a staging
18 environment -- testing and a staging
19 environment.

20 And then, you know, noting any
21 differences, sending that back to
22 engineering if they spot issues, getting
23 sign-off from the product managers and
24 business stakeholders and then signing off
25 for release.

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1 Q. And as part of that process, does
2 the QA team click on all of the hyperlinks
3 to make sure that they link to the correct
4 document that's intended?

5 A. That would be my expectation of
6 them, yeah.

7 Q. Do you have any reason to think
8 that that is not what happened in
9 connection with Version 5 to Version 6?

10 A. I have -- yeah, I have no reason
11 to believe that it didn't function that
12 way, other than, you know, what's, I think,
13 been documented extensively, which is that
14 there were a lot of failures in processes
15 at the company.

16 So that could -- there's a
17 possibility that that could have been the
18 case here as well.

19 Q. So you think there's a
20 possibility that the QA process could have
21 failed, and someone that clicked a link to
22 a terms of use might not have shown the
23 terms of use that was intended?

24 MS. BRIER: Objection to form.

25 Misstates.

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1 THE WITNESS: Got -- I mean --

2 yeah, there's a possibility of -- you
3 know, there's a possibility of pretty
4 much anything happening, right?

5 So -- but, I mean, this just went
6 through a process. Both Roni and
7 Matthew are pretty detail- -- I mean, I
8 know them to be pretty detail-oriented
9 professionals.

10 I wouldn't expect that the end
11 product would have been -- would have
12 had, you know, kind of material --
13 material problems.

14 BY MR. COLODNY:

15 Q. Okay.

16 A. So I would have expected it to
17 function the way that we -- that is
18 outlined.

19 Q. And I'm not asking for the remote
20 possibility that something can always go
21 wrong.

22 A. Got it.

23 Q. We all know that.

24 But generally, that the company
25 operated a QA process that made sure that

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1 when an update went live, the links that
2 said they were taking somebody to somewhere
3 generally worked, and there was a process
4 behind it?

5 A. That's my expectation, yeah. And
6 that's my understanding also.

7 Q. And what's that expectation based
8 on?

9 A. That the -- that the process is
10 built to accomplish that, and that we had
11 people in seats to perform that function.
12 We had people in seats to review that
13 function, review the final output, yeah.

14 Q. And you mentioned that Matthew
15 de la Fuente was kind of the head of this
16 all.

17 Do you know him to be a fairly
18 diligent person?

19 A. Yeah, extremely diligent. Yeah.

20 Q. Are you aware of any success
21 metrics that product managers used to
22 define the goals of this resolicitation
23 process?

24 A. Definitely became -- you know, I
25 was in the process of preparing the

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1 declaration, you know, kind of jogged my
2 memory of discussions and emails that I saw
3 at that time.

4 But I knew that the team was
5 carefully tracking the percentage of
6 customers that had accepted the terms and
7 using that as a success metric.

8 Q. Were they track -- also tracking
9 the people that rejected the terms?

10 A. I don't know. That's not the
11 part that I paid attention to in reviewing
12 this declaration, but that would make sense
13 that they would. I would -- that -- that
14 makes sense.

15 Q. And when -- when the company was
16 building the workflow to -- for users to
17 click through to accept the terms, were
18 there certain success metrics that were
19 communicated to the project managers or
20 product managers not to harm in that
21 process?

22 MS. BRIER: Objection to form.

23 THE WITNESS: I'm sorry. Can
24 you...
25 ///

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1 BY MR. COLODNY:

2 Q. Sure.

3 When -- when the company was
4 constructing the workflow --

5 A. Uh-huh.

6 Q. -- and presenting the scope of
7 the project for the product managers and
8 the product to be built --

9 A. Uh-huh.

10 Q. -- were there certain success
11 metrics that they said, we need to have met
12 as part of this?

13 A. Yeah, pretty much, like, what my
14 answer was before. I think that the team
15 was focused on making sure that as many
16 customers as possible had -- had -- you
17 know, had processed this -- you know, had
18 opened the email. Actually, yeah, that
19 would be a good one.

20 I do think that there -- from my
21 discussions, people were looking at, like,
22 the -- you know, people who had opened the
23 emails and people who had, you know,
24 clicked on accept. I think those were
25 the -- those were the primary metrics.

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1 Q. Were they designing this to make
2 sure that the people that accepted, clicked
3 on the hyperlink for the terms of use?

4 A. Yeah. I mean, so my
5 understanding is, yes. And just reviewing,
6 you know, the exhibits, I think a company
7 has to kind of, like, go out of its way,
8 you know, to -- there's a few things that
9 we said in there, like, it's tempting to
10 skip this, but it's important for you to
11 review this.

12 You know, the vast majority of
13 companies, I think, don't go out of their
14 way to call that out.

15 So my impression and my
16 understanding from discussions was that
17 there was a legitimate effort on behalf of
18 the company to make sure that customers
19 that still wanted to participate in the
20 program were reviewing the terms of use
21 carefully and accepting it.

22 Again, you know, like, the
23 mindset at the time for employees of the
24 company, you know -- actually, you know,
25 leading up to the pause -- leading up to

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1 the custody -- the release of custody was
2 that our customers loved the program. They
3 wanted to continue using it.

4 They did not want to be blocked
5 from using it because of, you know, X, Y, Z
6 reason that might come up. And so our
7 efforts were around trying to help our
8 customers participate in the program.

9 Q. Did your product team track
10 whether users fell off at a certain point
11 during the sign-in process?

12 MS. BRIER: Objection.

13 MR. COLODNY: Sorry. Strike
14 that.

15 BY MR. COLODNY:

16 Q. Did your product team track
17 whether users fell off during the account
18 creation process?

19 A. There was definitely a -- a
20 drop-off analysis that was done and
21 reviewed on a regular basis.

22 Q. And was the product team
23 instructed to change the account creation
24 process to minimize the amount of users
25 that dropped off throughout that process?

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1 MS. BRIER: Objection to form.

2 THE WITNESS: It's like a -- you
3 know, for any consumer-oriented app,
4 like, it's a very common practice to
5 look at reducing friction to get people
6 signed up and registered.

7 You know, to reducing -- reducing
8 friction to get people to take the, you
9 know, kind of the core action for
10 becoming a customer -- a valuable
11 customer.

12 So that -- yeah. I mean, so do I
13 have firsthand -- so I saw the
14 reports -- once I became a member of
15 ExCo in September of 2021, and I was on
16 the distribution list for kind of the
17 regular reporting that was sent out
18 about, like, new customer signups and
19 customers who are making their way
20 through the process of becoming active
21 customers, yeah, I had exposure to
22 that.

23 But -- again, leading up to that
24 point where I became a member of ExCo,
25 in my innovation role, that wasn't --

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1 we weren't -- we weren't working
2 closely enough with the product to
3 have -- to have that kind of exposure.

4 I do know that there was a -- we
5 had a growth team on the platform, and
6 generally, like -- sorry. We had a
7 growth team in the company. And
8 generally that growth -- this is
9 exactly what, like, growth teams look
10 at.

11 BY MR. COLODNY:

12 Q. I want to get back to a couple
13 things that you just said.

14 But I'll first ask, are you aware
15 of any changes that were made to the
16 account sign-in page to increase the amount
17 of users that accepted or created accounts?

18 Let me say it again. I think I
19 mangled the question.

20 Are you aware of any changes that
21 were made to the account sign-up page that
22 were designed to make users create an
23 account --

24 MS. BRIER: Objection to form.

25 ///

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1 BY MR. COLODNY:

2 Q. -- more users create an account?

3 A. Yeah, I'm not sure of the exact
4 timing of, like, when these changes would
5 have been made. But -- and let me take a
6 step back.

7 It was, like, completely outside
8 of my area for the -- you know, for the
9 entire -- actually, for the entire time
10 that I've been at Celsius -- right? --
11 because the growth team reported into the
12 chief product officer -- actually, the
13 director of product -- whatever his title
14 was -- chief product officer. There were
15 two chief product officers in my time at
16 Celsius.

17 So I wouldn't have been directly
18 involved in it. But I mean, I do know we
19 did things like social logins, which is a
20 way to facilitate new customer signups,
21 meaning you can click on the Google icon or
22 the Twitter icon and basically use the
23 credentials from -- from that other
24 platform to quickly create an account
25 without having to, you know, type in as

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1 much information.

2 But, you know, as much as those
3 other teams might have made -- you know,
4 tried to make it easier, my role on the
5 compliance side was to not make it too
6 easy -- I mean, you know, we had to make
7 sure that we were fulfilling our
8 obligations with the Bank Secrecy Act to
9 make sure we had a reasonable understanding
10 of who our customers were.

11 So even if the business was
12 trying to make it easier, I was making sure
13 that we were fulfilling our obligations
14 under -- as a money services business.

15 Q. Who else had a role in overseeing
16 that you were fulfilling obligations to
17 balance this ease of signup with compliance
18 and disclosure?

19 A. The regulatory team. I think, if
20 I -- you know, thought about the division
21 of labor between the -- the functions --
22 the regulatory team, you know, being that
23 they're attorneys and are qualified to,
24 like, evaluate law -- or, you know, the
25 regulations would determine the

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1 applicability of the regulation for the
2 company.

3 And then the compliance team's
4 job was to make sure that we were complying
5 with that -- with those laws that applied
6 to the company.

7 In the case of the Bank Secrecy
8 Act and sanctions, you know, I ended up
9 having, you know, probably among the best
10 knowledge about those rules in the company.
11 So I didn't really need somebody to tell me
12 how to apply those.

13 Q. And the regulatory team, that
14 would be Roni again?

15 A. Roni, Yarden, yeah, and to
16 some -- yeah, to some -- yeah, on the
17 regulatory side, those guys.

18 Q. Are you aware to any changes to
19 the location or display of the terms of use
20 that were made to encourage more people to
21 sign up for Celsius apps in the sign-in
22 page?

23 A. I'm not aware of that, no.

24 Q. We talked before about beta.

25 Are you aware that the version --

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1 the resolicit kind of -- the resolicitation
2 of Version 6, was that released to a subset
3 of users before it was released to all
4 users to perform NAB test or otherwise
5 test, or was it released to all users at
6 the same time?

7 A. I don't -- yeah, I'm not sure. I
8 mean, we did a beta release -- an alpha and
9 beta release on the swap side, but I don't
10 know -- let me double-check if that was
11 something in the -- I don't remember that
12 being a part of the process for this.

13 And just, like, maybe a giant
14 caveat here is that periodically the
15 company did release things to employees,
16 you know, for review and stuff like that.
17 But I don't know -- I don't know if that
18 was the case here.

19 Yeah, I don't think that was the
20 case here.

21 Q. All right. I want to go back to
22 your declaration, which I think was
23 Exhibit 7, and turn to page 17.

24 A. Got it.

25 Q. So can you explain what this

177

1 screen is showing?

2 A. This screen is showing the
3 decision tree or kind of the customer
4 workflow, and that diamond at the top is
5 basically saying at the point of having to
6 click "accept" or, you know, "don't accept"
7 or "skip" or "cancel" or -- actually,
8 sorry, "yes" or "no."

9 So if they clicked on "yes," they
10 would see the screen on the left. If they
11 clicked on "no," they would see the screen
12 on the right.

13 Q. So maybe if we could turn back
14 one page.

15 Would this be the first screen
16 that users saw when they opened up the
17 Celsius app in connection with the
18 resolicitation of terms of use Version 6?

19 A. That's my understanding, yes.

20 Q. And if -- I think -- what, if you
21 flip to the next page, what would happen if
22 the user clicked "agree and continue"?

23 A. If they checked the check boxes
24 and clicked "agree and continue," that
25 should have dropped them off at the main

178

1 portfolio, what we called the kind of home
2 page or the main portfolio page.

3 Q. Okay. And what would happen if
4 they clicked "remind me later"?

5 A. They would have seen this screen
6 on the right.

7 Q. And so once they see this screen
8 on the right, what would happen if they
9 clicked "continue anyway"?

10 A. Like, what was outlined in the
11 declaration about, like, Phase 2 and 3,
12 there would have been a period of time
13 where they would have been able to continue
14 to access the app.

15 But, you know, then eventually
16 they would have been -- they would lose --
17 lose the ability to earn -- to participate
18 in the earn program.

19 Q. So I think you're talking
20 about -- and I'll have to refresh my
21 recollection on the dates -- but Phase 1
22 was beginning on July 22. The initial
23 outreach happened, and then they had --
24 users had until August 5, 2021, to accept
25 it, or they would lose access.

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1 In between July 22 and August 5,
2 if they clicked "continue anyway," they
3 would be redirected to the main Celsius
4 app?

5 A. Correct.

6 Q. And when they were redirected to
7 the main Celsius app, could users then
8 withdraw their coins?

9 A. Yeah, there was some period of --
10 yeah, if you could just give me a minute to
11 review this again.

12 (Pause for reading/reviewing.)

13 A. Yeah, so this is kind of covered
14 in page 7, item -- or No. 19, that
15 paragraph where it says, "On August 5,
16 2021," which was the commencement of
17 Phase 2, "accounts who did not accept terms
18 of use Version 6 were suspended. And once
19 suspended, accountholders could view their
20 account dashboard" -- that's what I was
21 calling the portfolio screen or the main
22 kind of home screen -- "but could not
23 conduct any transaction including
24 withdrawals unilaterally."

25 So if they wanted to withdraw

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1 funds, they would need to work with our
2 customer support team to do that.

3 Q. And that's for the period between
4 July 22 on, or was that after July 22?

5 A. That was starting on August 5.
6 So basically people were notified they had
7 a period of time to accept. Then they were
8 suspended starting August 5, if they had
9 not accepted.

10 And then on August 19, we
11 discontinued the payout of rewards to those
12 accounts.

13 Q. So between July 22 and August 5,
14 if you clicked "continue anyway," could you
15 access your app and withdraw your funds?

16 A. That's my understanding, yes.

17 Q. And then why did the company
18 suspend accounts after August 5?

19 A. Because of the -- I'm just trying
20 to think of this -- the reasons for making
21 the change in the Celsius entity that we
22 were -- that the customers -- sorry.

23 Let me say that more efficiently.

24 The whole purpose of -- or one of
25 the main purposes of the Version 6 terms of

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1 use was changing the company that the
2 customers were engaging with from the UK
3 entity to the U.S. entity.

4 It was important that we
5 stopped -- if customers were not accepting
6 the new terms of use, it was important that
7 we stop providing services to them from
8 the -- you know, as a UK company.

9 Q. And why did you stop users -- or
10 suspend users' accounts? Why did Celsius
11 suspend users' accounts before they stopped
12 them from earning rewards?

13 MS. BRIER: Object to form.

14 THE WITNESS: Yeah. I think
15 definitely, like, someone with, you
16 know, more of the legal and regulatory
17 background may be better to answer that
18 question.

19 But generally, we were -- I think
20 that there was -- there's generally a
21 lag between when we -- when we would
22 suspend a user's account and when we
23 would stop paying them rewards. But I
24 don't -- I don't know the background
25 for why that decision was being made.

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1 MS. BRIER: And, Aaron, just as a
2 time check, I think you have about five
3 minutes left on the record for the
4 three hours.

5 BY MR. COLODNY:

6 Q. After this date, Celsius
7 continued to do all of its investing
8 activities through the UK company, correct?

9 MS. YANEZ: Objection.

10 THE WITNESS: That is my
11 understanding, yes. Correct.

12 BY MR. COLODNY:

13 Q. Can Celsius -- you mentioned
14 before that you can see where people come
15 in from.

16 Can Celsius send coins back to
17 users without their consent?

18 MS. BRIER: Objection to form.

19 Outside the scope.

20 THE WITNESS: Can we send them
21 back to them?

22 I'm not aware of any instance
23 where we did. I mean, we had the
24 ability to do that, but -- because
25 we're in control of the coins.

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1 But, yeah, I'm not aware of a
2 case where we did that.

3 BY MR. COLODNY:

4 Q. But there's nothing preventing
5 Celsius from sending the three Bitcoins I
6 deposited on it unilaterally back to my
7 address where I deposited them from?

8 A. Yeah. And there's a very good
9 reason why you wouldn't want to do that,
10 which is that, you know, oftentimes the
11 address from which we receive the coins
12 from may be the withdrawal -- like, the
13 outbound address, for example, of an
14 exchange.

15 And if you were to send the coins
16 back to that address, it's not the
17 user's -- that's not the actual user's
18 address. So you could potentially cause
19 the customer to lose their coins.

20 Q. Did Celsius make any attempt to
21 send users' assets back to them that did
22 not accept the terms of use?

23 A. Not to my knowledge.

24 Q. Did Celsius provide users with
25 advance notice of the terms of use

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1 Version 6, or was the first email sent on
2 July 22?

3 A. Yeah. Like I was saying earlier,
4 I just checked -- and I think that was
5 yesterday -- in my personal email, and I
6 got the email on July 22.

7 Q. Okay. Do you know why users --

8 MR. COLODNY: Well, I think I'll
9 reserve my two minutes for any
10 rebuttal, if I have it.

11 MS. BRIER: Sounds good.

12 MR. COLODNY: Thank you very
13 much.

14 THE WITNESS: Sure thing.

15 MS. BRIER: Do you want to go off
16 the record?

17 MR. COLODNY: Yes.

18 MS. BRIER: Awesome.

19 We can go off the record.

20 THE VIDEOGRAPHER: All right.

21 The time is currently 1:19 p.m., and we
22 are going off the record for Media Unit
23 No. 2 of this testimony.

24 ///

25 ///

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1 (Whereupon, a break for lunch was
2 taken from 1:19 p.m. to
3 2:06 p.m.)

4 THE VIDEOGRAPHER: All right.

5 The time is currently 2:06 p.m. This
6 is continuation of Media Unit No. 2 of
7 today's testimony, and we are back on
8 the record.

9 MS. BRIER: At the outset, I
10 would just like to remind folks on the
11 Zoom that this deposition has been
12 designated confidential under the terms
13 of the protective order.

14 So nothing discussed during this
15 deposition may be recorded, publicly
16 disclosed, whether orally, on Twitter,
17 by podcast or any other means.

18 If you have not signed the
19 protective order and you are currently
20 on the Zoom, you should sign off.

21 And we'd ask that you please
22 abide by the terms of the protective
23 order if you have signed it.

24 And with that, I will turn it
25 over to Ms. Cornell.

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1 MS. CORNELL: Thank you.

2 Shara Cornell at the Office of

3 the United States Trustee. That's

4 S-h-a-r-a, C-o-r-n-e-l-l.

5 EXAMINATION

6 BY MS. CORNELL:

7 Q. Good afternoon. I have a few
8 follow-up questions from earlier today, and
9 then some -- few -- a few additional
10 questions on some other topics.

11 First, I just wanted to go back a
12 little bit when we were discussing your
13 different roles at Celsius.

14 A. Sure.

15 Q. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

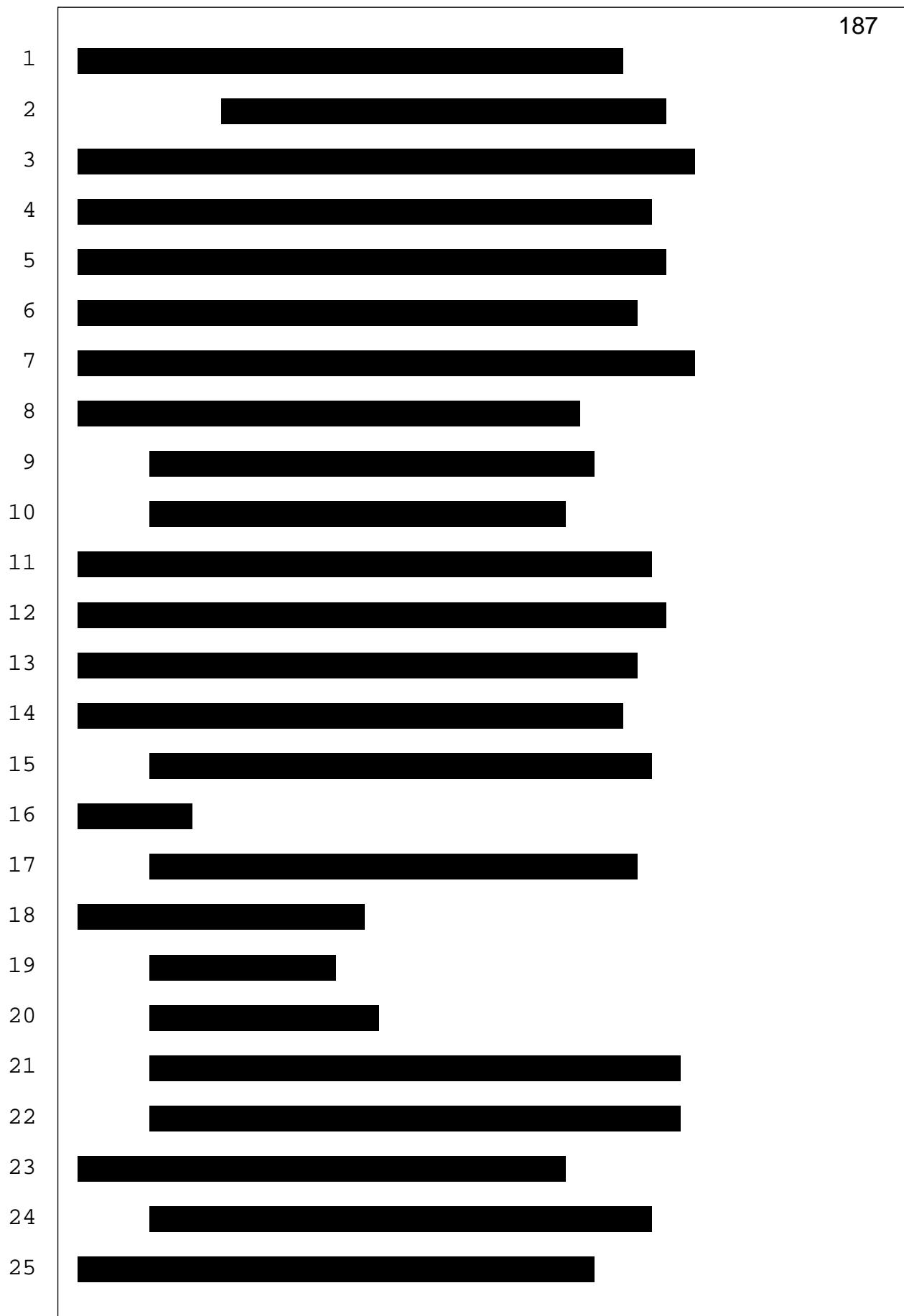
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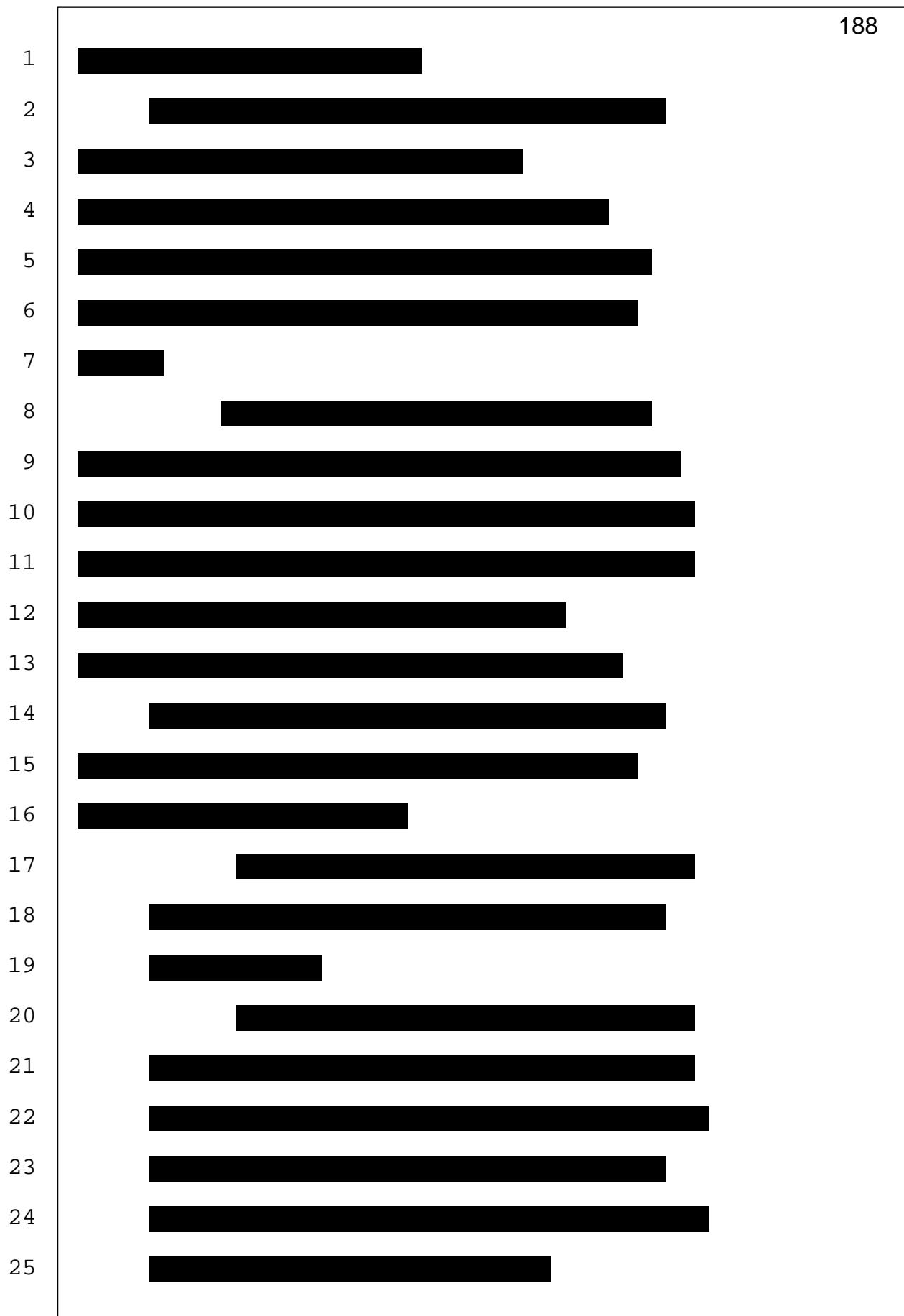
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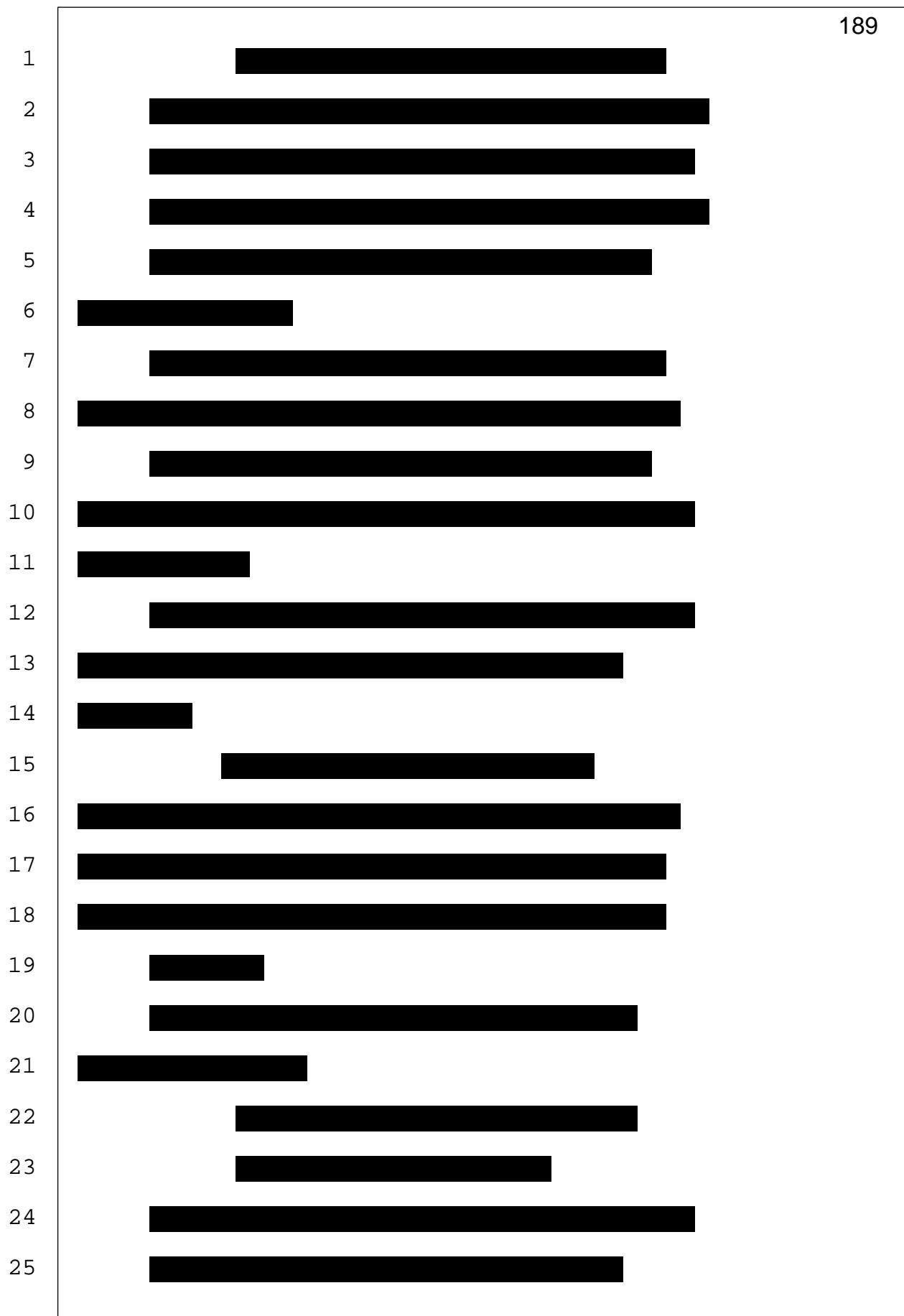
23 [REDACTED]

24 [REDACTED]

25 [REDACTED]







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1 BY MS. CORNELL:

2 Q. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q. Prior to joining Celsius, earlier
8 in your testimony you explained that you
9 were a Celsius user; is that correct?

10 A. That's correct.

11 Q. How did you educate yourself on
12 cryptocurrency prior to joining Celsius?

13 A. My -- so I worked for a kind of
14 traditional finance services company from
15 2006 to 2018, and in 2016, that company
16 launched a -- we basically took the trading
17 platform that we were offering to the
18 institutional investors and we added crypto
19 assets to it.

20 So around 2016, I started to kind
21 of -- you know, to educate myself on the
22 industry. And then leading up to the
23 launch of our product, just talking with
24 mostly institutional investors about -- you
25 know, about the market, the products, the

1 industry.

2 But it was mostly, you know -- I
3 mean, through my own efforts.

4 Q. Okay. So it's fair to say that
5 it was mostly through your own personal use
6 of cryptocurrency that you became familiar?

7 MS. BRIER: Objection to form.

8 THE WITNESS: And professional --

9 MS. BRIER: I'm sorry. If you
10 could just give me a minute to object.

11 Object to form.

12 You can answer now.

13 THE WITNESS: Yeah. I mean, the
14 experience I was talking about was
15 professional, so in my role at the
16 company TORA Trading. But then, yeah,
17 I also was purchasing crypto
18 personally.

19 BY MS. CORNELL:

20 Q. Can you talk a little bit about
21 that previous position when you may have
22 received either knowledge or education
23 regarding cryptocurrency and elaborate,
24 please.

25 A. Okay.

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3 THE WITNESS: So -- sorry. You
4 asked how I was educating myself
5 about --

6 BY MS. CORNELL:

7 Q. At your previous employment. I
8 think you said it was at Torrid? Is that
9 T-o-r-r-i --

10 A. TORA.

11 Q. Can you spell it?

12 A. T-O-R-A.

Q. Thank you.

14 A. Oh, my role there. So I was a
15 managing director of product -- product
16 management. And, sorry. You wanted to
17 know my role or how I was...

Q. I'll rephrase.

19 I would like to know how at TORA
20 you -- strike that.

21 | While at TORA --

22 A. Uh-huh.

23 Q. -- what roles or responsibilities
24 did you have that related to
25 cryptocurrency?

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1 A. Yeah. So I managed the -- we had
2 about a 40, 50 person product
3 development -- or product management team.

4 And so that team was responsible
5 for taking the trading platform that we had
6 that worked with traditional assets like
7 equities and the listed derivatives and
8 other assets -- assets classes.

9 And basically adding support to
10 cryptocurrencies TO the platform,
11 interfacing with cryptocurrency exchanges,
12 working with fund admins, you know, to --
13 you know, connect -- connect the fund admin
14 platforms.

15 So, you know, by interacting with
16 those partners, doing my own research,
17 talking with the product managers who are
18 actually involved in the day-to-day product
19 development work. Through all those
20 things.

21 Q. During your time at TORA, were
22 there any similarities in your job
23 responsibilities to those at Celsius?

24 A. So like I mentioned, my job
25 responsibilities changed substantially,

194

1 like, you know, from the innovation role to
2 compliance and then currently. So
3 generally, like, most of my career has been
4 in product development.

5 And the -- the innovation role
6 was product development-like. So similar
7 in that way.

8 I mentioned this earlier, but
9 we -- TORA was a regulated financial
10 services company, a FINRA broker-dealer,
11 and so I had some exposure to, like,
12 working in a regulated -- you know, for a
13 regulated company.

14 We had undergone multiple SOX
15 exam -- or audits, whatever you want to
16 call them. You know, tons of -- tons of
17 due diligence, rounds of due diligence from
18 prospective customers. We raised money
19 from Goldman and BAML.

20 So those kinds of things exposed
21 me to, like, you know, things that were
22 more on the compliance and regulatory side
23 of things.

24 Q. Uh-huh. I'm going to switch
25 gears a little bit.

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1 Are you familiar with outside
2 counsel to Celsius other than Kirkland &
3 Ellis?

4 A. Yes.

5 Q. Who is outside counsel?

6 A. Latham.

7 MS. BRIER: Object to form. And
8 outside the scope.

9 But go ahead.

10 THE WITNESS: Latham.

11 BY MS. CORNELL:

12 Q. Since you joined Celsius in
13 February of 2021, has Latham been outside
14 counsel, other than Kirkland, to Celsius?

15 MS. BRIER: Objection to form.

16 Outside the scope.

17 Go ahead.

18 THE WITNESS: Yeah. I mean, I
19 said Latham, but I know that we worked
20 with a number of other law firms as
21 well.

22 BY MS. CORNELL:

23 Q. I think -- I think earlier you
24 may have mentioned -- hold on -- I think
25 you may have mentioned Buckley.

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1 A. Yep. Buckley was one. For a
2 very brief time, we worked with Goodwin. I
3 think, yeah, for an even briefer time we
4 worked with WilmerHale. Yeah, I think
5 that's about -- those are the ones that I
6 can remember.

7 Q. With respect to regulatory
8 matters, would you say that that was
9 predominantly Latham & Watkins?

10 MS. BRIER: Same objections.

11 Go ahead.

12 THE WITNESS: Yeah, predominantly
13 Latham. On the -- not about regulatory
14 questions, but on licensing, we work
15 with Buckley and their licensing arm
16 called Approved Licensing for money
17 transmission and lending -- lending
18 license applications.

19 BY MS. CORNELL:

20 Q. What about for product
21 development?

22 MS. BRIER: Same objections.

23 THE WITNESS: So we --

24 MS. BRIER: And, Oren, I would
25 caution you if this is getting into any

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1 privileged information or
2 communications that you had with
3 counsel, just not to disclose that.

4 But if you can answer without
5 getting into those discussions, go
6 ahead.

7 THE WITNESS: Yeah. I mean,
8 like, again, for the -- just to
9 emphasize that my role was not
10 really -- I was not responsible for or
11 involved in day-to-day on earn or the
12 loans program.

13 So to the extent that those law
14 firms were involved in discussions with
15 the company, I wasn't really -- again,
16 I might have been added to the invites
17 to these things, but that wasn't
18 something that I spend a lot of time
19 on.

20 And my innovation role, as we
21 were evaluating new products and
22 services, we would sometimes interface,
23 you know, with Latham, Buckley or
24 Goodwin.

25 ///

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1 BY MS. CORNELL:

2 Q. Or Goodwin, okay.

3 During your role, did you ever
4 work with Ron Deutsch?

5 A. Yes.

6 Q. What about Joseph
7 Golding-Ochsner?

8 A. Yes.

9 Q. Yarden Noy?

10 A. Yes.

11 Q. Roni Cohen-Pavon?

12 A. Yes.

13 Q. During your time at Celsius from
14 February 2021, would any of the four names
15 that I just listed, would they have been
16 involved in the creation of the terms of
17 use?

18 A. Yeah. As we're talking about --
19 as we've been talking about, those were the
20 people I say that had -- from my -- from my
21 understanding and from what I remember from
22 that period of time, those were the
23 individuals involved in it.

24 Q. Now, in February 2021, is it your
25 understanding that Ron Deutsch was general

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1 counsel for Celsius?

2 A. In -- you said in February --

3 Q. When you started.

4 A. That's right.

5 Q. Just one second.

6 Would it be surprising to you

7 that Ron Deutsch joined Celsius in

8 March 2021?

9 MS. BRIER: Objection to form.

10 Foundation.

11 THE WITNESS: Yeah, and I should
12 have said, you know, when you mentioned
13 the date before, you know, the first
14 few weeks that I joined, you know,
15 probably like a lot of people, were
16 pretty hectic. So I'm not -- I am not
17 certain the day or time when I first
18 met Ron.

19 But, no, whether it was, February
20 or March, like -- roughly -- it was
21 shortly after I joined that I met Ron.

22 BY MS. CORNELL:

23 Q. Okay. I'm going to switch a
24 little bit from some of the other questions
25 today.

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1 Are you familiar with the budget
2 that was filed by Celsius on October 17,
3 2022? It's Docket No. 1111.

4 Just generally familiar with it?

5 A. Generally, yes.

6 Q. Okay. Were you present at the
7 October -- at the November 17, 2022,
8 hearing last week?

9 A. No. I mean, I'm supposed to be
10 on vacation as of last Wednesday; so...

11 Q. Well, it's a good vacation.

12 A. Yeah.

13 Q. Since the October 17, 2022,
14 budget and the 13-week cash flow, there
15 were several comments made at the last
16 hearing about Celsius being cash flow
17 positive as of right now.

18 To the best of your
19 understanding, do you believe that Celsius
20 is currently cash flow positive?

21 MS. BRIER: Objection to form.

22 Outside the scope.

23 THE WITNESS: Yeah. I mean, I
24 just have to say, like, you know, as
25 we've talked about, like, me wearing a

201

1 bunch of different hats --

2 BY MS. CORNELL:

3 Q. Uh-huh.

4 A. -- I have so much on my plate
5 that there is -- you know, I have to -- you
6 know, try to stay in my lane as much as I
7 can.

8 So I trust Chris. I trust the
9 people on that side in those areas of
10 the -- of that company. So I don't -- I
11 don't dig into that too much.

12 Q. Sure.

13 Were you involved with -- strike
14 that.

15 Are you involved with GK8 at all
16 during your -- in your many roles?

17 MS. BRIER: Objection to form.

18 Outside the scope.

19 You can answer.

20 THE WITNESS: Yeah, so at the
21 time -- again, because -- sorry, not
22 again.

23 When did we buy -- so I think
24 that happened in the fall of 2021. You
25 know, I was trying to launch multiple

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1 new products. I had just become the
2 CCO. Was in the process of tripling
3 the size of that team. Had a ton of
4 stuff going on.

5 I became aware of -- or, you
6 know, this idea that we might -- that
7 we were trying to buy them. I remember
8 being copied on a lot of the meetings.
9 I sat through a bunch of the meetings,
10 a bunch of the initial meetings. It
11 seemed like a lot of people -- there
12 were a lot of cooks in the kitchen.

13 And, again, I kind of backed off
14 and said, you know, I've got my own
15 stuff to kind of worry on -- worry
16 about and focus on.

17 So I have awareness of it, but I
18 wasn't super close to it.

19 BY MS. CORNELL:

20 Q. Okay. To backtrack a little bit,
21 a few different times during your testimony
22 today, you made mention of the products you
23 were working on while at Celsius.

24 Can you explain what products
25 you've worked on at Celsius?

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1 MS. BRIER: Objection to form.

2 Outside the scope.

3 But go ahead.

4 THE WITNESS: I have to kind of
5 dust off the cobwebs because we haven't
6 been thinking about new products for
7 a -- I mean, I haven't been thinking
8 about those products that we were
9 working on.

10 But so we had the swap product,
11 which was -- where customers could
12 exchange one asset for another via the
13 platform. We had the credit card
14 product.

15 We had -- we were involved in --
16 we were involved in formulation of --
17 those two products and other
18 products -- I'm sorry, and also the
19 custody product.

20 The -- we -- in the spring of
21 2022, we -- we acquired a team, and the
22 IP for -- of a company called Linus
23 with the intention to develop a
24 registered investment advisor.

25 Those are the ones -- I'm sure

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1 I'm missing something, but those are
2 the ones that I'm remembering.

3 BY MS. CORNELL:

4 Q. And just to break it down a
5 little bit more. You used the word "we" a
6 lot in your answer. Can you speak more
7 specifically about your role in those
8 product development?

9 If it would be easier to pick one
10 and then kind of walk us through your role.

11 A. Yeah, sure.

12 Oh, sorry.

13 MS. BRIER: No, no problem. Go
14 ahead.

15 THE WITNESS: Yeah, so I can
16 start with, like, swap. Actually, swap
17 and credit card were kind of similar.
18 When I got to the company, the company
19 had already put together some -- some
20 kind of, you know, designs, ideas for
21 how they would implement those
22 products.

23 And I kind of picked them up --
24 picked up those projects, figured out
25 what needed to be done to bring them to

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1 production, and then kind of ran with
2 it.

3 So in the case of swaps, we -- it
4 was pretty well formulated at the time.
5 We had to -- and just to explain that,
6 like, that innovation role, as opposed
7 to -- let's say, your typical product
8 manager that's kind of, like, I build a
9 product. I write -- you know, I write
10 how this product should work and, you
11 know, work with the design team to do
12 the user interface.

13 The innovation team was
14 responsible for all aspects of standing
15 up the business units.

16 So in the case of the credit
17 card, whereas with the swaps product,
18 there was a business requirements
19 document. It was pretty -- you know,
20 pretty straightforward about how we
21 were going to implement it.

22 With the credit card, there
23 wasn't really a person in the company
24 that had experience with that, so
25 after, you know, spending about four --

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1 four to six weeks -- and I had no prior
2 knowledge of working on payments
3 products -- I decided that the next
4 step was to go out and find an expert.

5 So we hired someone. And so --
6 yeah, my responsibility was just
7 basically making sure we had the
8 people, the plan, the partnerships in
9 place to bring these things to market.

10 And my involvement could be
11 writing a business requirements
12 document, building a financial model,
13 working with regulatory and legal to
14 think about, like, you know, regulatory
15 or legal implications. Yeah, it's
16 pretty wide-ranging.

17 BY MS. CORNELL:

18 Q. So let's say, for example, the
19 production of a product was near or close
20 to its -- to its culmination.

21 Who would have the final say on
22 that during your time at Celsius?

23 MS. BRIER: Objection to form.

24 Outside the scope.

25 THE WITNESS: I can answer?

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1 Okay. So -- and, yeah, that's
2 something I should have mentioned
3 earlier. There is a -- you know, there
4 was definitely some tension between the
5 innovation team and the existing
6 product team.

7 BY MS. CORNELL:

8 Q. Uh-huh.

9 A. I think I touched on this
10 earlier, that in a lot of organizations,
11 the people developing new products are not
12 just thinking, you know, about the current
13 products that they have but also future
14 products.

15 So all of a sudden, you know, by
16 bringing me into the company and saying,
17 like, you're in charge of new products,
18 there's some -- you know, the existing
19 product team is, like, does that mean that
20 we don't get to think about something new?

21 So there wasn't always, like,
22 great communication between the innovation
23 and product teams.

24 Also most -- I think, actually,
25 all of the product managers -- the head of

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1 product at the time, or the chief product
2 officer was based in Tel Aviv. A lot of
3 the other product managers were in Tel Aviv
4 or Serbia.

5 So -- but, like, that being said,
6 there was a pretty clear handoff in all
7 cases from this kind of -- this is what we
8 want to develop; here's the business
9 rationale; here's the financial model; this
10 is how it will work.

11 And then kind of -- you know,
12 everybody gets around the table, high five,
13 this sounds good. And then there would be
14 a handoff to the product -- to the product
15 team.

16 And my -- I'm joking about the
17 high five around the table. It wasn't
18 necessarily that well coordinated, and it
19 wasn't, like, the product team -- there
20 wasn't necessarily smooth transitions to
21 the product team.

22 But that was, you know,
23 generally -- like, if I take the credit
24 card as an example, you know, we had
25 business requirements, documents, you know,

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1 Confluence pages with all the details. We
2 had done, you know, dozens -- or hundreds
3 of hours of meetings with prospective
4 partners that could help us deliver the
5 card program.

6 So we basically were packaging
7 all this stuff and then would have, like,
8 kickoff meetings with our engineering and
9 product team to -- to move from, like, idea
10 or concept -- fairly fleshed-out idea and
11 concept to, okay, let's start writing code.

12 Q. So earlier in your testimony, you
13 discussed how when you first joined
14 Celsius, you were mainly looking at -- I
15 believe it was international -- strike
16 that.

17 When you first joined Celsius,
18 you were looking at the Bank Secrecy Act;
19 is that correct?

20 A. When I --

21 MS. BRIER: Object to form.

22 Go ahead.

23 THE WITNESS: I'm sorry.

24 When I first started my chief
25 compliance officer role, you know, and

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1 this goes back to, like, my first --
2 the first time I got direct exposure to
3 compliance, which is when I was at
4 Huobi U.S. and I became the interim
5 chief compliance officer.

6 Like, the first thing you want to
7 do is understand what you're liable
8 for, what the company is -- like, what
9 our obligations...

10 So, yeah, maybe just to directly
11 answer your question. In
12 September 2021, when I became the chief
13 compliance officer role, I focused on
14 our -- on our originations as a money
15 services business.

16 But in February 2021, when I
17 first started at the company,
18 compliance -- that wasn't in my --
19 wasn't in my lane.

20 BY MS. CORNELL:

21 Q. Okay. Also earlier in your
22 testimony, you mentioned that when you
23 first started the compliance role, that you
24 may not have felt -- and I don't want to
25 mischaracterize what you said, so please

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1 correct me if I'm wrong -- that it was not
2 the role that you were looking for at
3 Celsius; is that correct?

4 A. Yeah, that's correct. Yeah. I
5 mean, I joined -- most people will kind of
6 joke around about the -- you know, I joined
7 as innovation. I ended up as the chief
8 compliance officer. A lot of people view
9 those as, you know, kind of different ends
10 of the spectrum.

11 Q. Uh-huh.

12 A. So, yeah, my intention was not to
13 become the chief compliance officer, but
14 the company had a need for a chief
15 compliance officer. And, you know,
16 discussed it with Alex and Roni and
17 other -- you know, Ron Deutsch and stepped
18 into the role.

19 Q. Were they aware of your -- again,
20 I don't want to mischaracterize -- your, I
21 guess, trepidation about joining that role?

22 MS. BRIER: Object to form.

23 Outside the scope.

24 Go ahead.

25 THE WITNESS: There was a --

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1 definitely a -- it was well understood
2 that this was not going to be my
3 long-term possession -- position within
4 the company.

5 So the idea was to kind of --
6 just to give you an idea of the
7 context. There was a chief compliance
8 officer for the company for, you know,
9 that initial -- was it, like -- yeah,
10 roughly six-month -- six- to
11 seven-month period.

12 At some point, you know, he
13 decided to leave or the -- or the
14 company asked him to leave. I don't
15 know those details.

16 And as the company was
17 interviewing replacements, that's when
18 the public notices from different
19 states started, you know, to go out.

20 And so the -- the way that -- I
21 don't have firsthand knowledge of this,
22 but the way it was represented to me
23 was that those CCO candidates kind of,
24 you know, pulled back from discussions
25 given all the -- you know, cease and

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1 desist notice and notices about public
2 hearings on the earn program.

3 And so, yeah, there was a --
4 basically there was a period of --
5 there was a deadline approaching where
6 the CCO who was leaving, we would have
7 his last day and we have an obligation
8 as a money services business to have a
9 chief compliance officer and a BSA
10 officer. And, actually, the obligation
11 is the BSA office, not CCO.

12 But because of this deadline and
13 because I had some experience -- had
14 some pretty directly relevant
15 experience, I agreed to do it with the
16 understanding that when -- when some of
17 these regulatory issues had -- you
18 know, were resolved, we would be
19 looking for a replacement.

20 And it took longer than I
21 expected, but I mentioned in the --
22 earlier today that we were just a few
23 days away from finding a replacement
24 for me.

25 ///

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1 BY MS. CORNELL:

2 Q. As of today, how is that search
3 going?

4 A. We found an internal candidate
5 that's -- yeah.

6 Q. What's the name of that internal
7 candidate?

8 A. Adrian Alisie.

9 Q. Could you spell that for the
10 record? I'm sorry.

11 A. A-l -- I mean, Adrian, and then
12 let me just see if I can --

13 MS. BRIER: You don't have to
14 look it up. We'll get you the
15 spelling.

16 MS. CORNELL: That's fine.

17 THE WITNESS: Yeah.

18 BY MS. CORNELL:

19 Q. That's fine. Because I -- I'm
20 going to call him Adrian, for the record.

21 Was Adrian there when you first
22 stepped into this role as chief compliance
23 officer?

24 A. That's a good question. I don't
25 remember when he joined. He was our -- the

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1 company's head of internal audit.

2 Q. Okay. You spoke earlier about
3 how you obtained your job at Celsius by
4 directly reaching out to Alex Mashinsky.

5 Are you still in communications
6 with Alex Mashinsky?

7 A. No.

8 MS. BRIER: Objection.

9 THE WITNESS: Sorry.

10 MS. BRIER: Object to form.

11 THE WITNESS: Yeah. The last
12 message I have from him is the day he
13 resigned.

14 BY MS. CORNELL:

15 Q. Just to confirm for the record,
16 you did not speak with Alex Mashinsky prior
17 to your deposition here today?

18 A. Correct.

19 Q. Okay. Thank you.

20 A. Also can I just clarify?

21 Q. Yeah. Sure.

22 A. I didn't email Alex to get a job
23 at Celsius. He solicited -- he was asking
24 customers for feedback about how they could
25 improve the platform, and I wrote him an

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1 email with, like, five suggestions and then
2 he offered me a job.

3 Q. Oh. Thank you for that
4 clarification.

5 Just give me one moment, please.
6 I have some more questions, but some of
7 them are a little bit all over the place
8 because I was trying to take notes. So I
9 apologize if they don't all run into one
10 another.

11 Since your tenure at Celsius,
12 could a term of use or amendment to terms
13 of use have been approved without your
14 final signoff?

15 A. Yes.

16 Q. Since your tenure at Celsius,
17 could any marketing materials be published
18 without your final signoff?

19 MS. BRIER: Object to form.

20 Outside the scope.

21 You can answer.

22 THE WITNESS: Yes.

23 BY MS. CORNELL:

24 Q. Do you have -- this was discussed
25 a little bit earlier.

217

1 Do you or does Celsius have
2 information regarding how many users
3 accepted different terms of uses?

4 A. Yes, we do. That was the basis
5 for the -- for the data tables in my
6 declaration.

7 Q. What about how many users
8 rejected the terms of use?

9 A. I think that was brought up on
10 the last one -- I mean, somebody -- the
11 attorney from White & Case asked that
12 question. And my assumption is yes, but
13 that's not something that I paid attention
14 to in preparing for this.

15 Q. What department at Celsius would
16 have that information, or if you know the
17 person responsible?

18 A. So this information would be in
19 our -- it should be in our back office --
20 in our back office system. And the
21 question -- the question, which I don't
22 know the answer to off the top of my head,
23 is whether we distinguished between someone
24 who did not accept versus -- sorry --
25 someone who did not accept versus someone

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1 who rejected. And I just don't -- I can't
2 recall -- I can't recall how it was -- how
3 it was checked.

4 And if I had wanted to -- yeah,
5 like, you can see in the data table on
6 page 8 of my declaration, that the -- in
7 the way that we categorized it is accept or
8 not accept.

9 Q. Uh-huh.

10 A. So -- and to answer your
11 question, if I were gonna try to look into
12 that, I would -- I would log into the back
13 office system and check.

14 Q. So just for clarification, if you
15 needed to, you would be able to log into
16 that -- log into Celsius's back office
17 system and provide that information to
18 either Kirkland & Ellis or Alvarez?

19 MS. BRIER: Objection to form.

20 Go ahead.

21 THE WITNESS: Yeah, again, to the
22 extent that we actually do distinguish,
23 differentiate in the system between
24 someone that said reject and versus
25 someone who just doesn't accept, let me

219

1 just -- give me one second.

2 BY MS. CORNELL:

3 Q. Sure.

4 (Pause for reading/reviewing.)

5 A. Yeah. So actually, this is
6 something that we should -- that I will --
7 you know, I'm happy to go and confirm as a
8 follow-up. But you can see on page -- mine
9 is labeled A-8. At the top it's called
10 page 17 of 30 of the declaration.

11 That it says, "If you do not
12 agree to our updated terms of use and
13 privacy policy, please contact Celsius
14 support to close your account."

15 Q. Uh-huh.

16 A. So that indicates to me that we
17 most likely were not -- there was no -- no
18 means other than a person closing their
19 account to reject the terms of use.

20 Q. Okay. In that same vein, you
21 had -- would you have information regarding
22 the length of time that a user read or
23 reviewed the terms of use on the Celsius
24 website or application?

25 A. That information should be

220

1 available, but I -- so that information
2 should be available just by, you know, some
3 of the analytics apps that we have.

4 But I'm not aware of whether that
5 was something that was looked at or
6 reviewed.

7 Q. I believe it was earlier in your
8 testimony, I believe it was yours and not
9 someone else's, but please correct me if
10 I'm wrong, that early on in Celsius's
11 history, there was a large percentage of
12 international clients, but that that number
13 may have declined closer to the pause.

14 Is that a correct -- that that
15 was part of your testimony?

16 MS. BRIER: Object to form.

17 BY MS. CORNELL:

18 Q. Sure.

19 MS. BRIER: Go ahead.

20 THE WITNESS: So I think I
21 didn't -- I was talking a little bit
22 about that I think earlier today, and I
23 don't think I phrased it clearly.

24 What I meant was I had an
25 awareness of, like, the rough breakdown

221

1 of international versus U.S. customers.

2 BY MS. CORNELL:

3 Q. Uh-huh.

4 A. And I haven't tracked whether
5 that stayed consistent, you know, let's say
6 from March 2022 until now.

7 Q. Uh-huh.

8 A. So I'm not aware of whether
9 there's been a significant shift in one
10 direction or the other.

11 Q. Sure.

12 Was there any -- during your
13 tenure at Celsius, was there anyone at
14 Celsius with the same or similar role to
15 you located in another country?

16 A. Not to my knowledge.

17 Q. Or that focused on a region other
18 than the United States?

19 A. No, not to my knowledge.

20 Q. During your tenure at Celsius,
21 did you have any communications with any
22 regulatory bodies outside of the United
23 States with respect to the terms of use?

24 MS. BRIER: Objection to form.

25 Outside the scope.

222

1 You can answer.

2 THE WITNESS: I'm just thinking
3 about -- yeah.

4 I did -- I was involved in some
5 communications -- I think actually our
6 legal counsel was involved, so that's
7 probably most likely privileged.

8 But I was involved with some
9 communication with Lithuania where
10 we're registered as a company -- or
11 where we had a registered company. But
12 that's -- that's the extent of it.

13 And it was always with the -- it
14 wasn't, like, me alone. It was with
15 regulatory counsel.

16 BY MS. CORNELL:

17 Q. Okay. Just to clarify for the
18 record, though, other than counsel, you
19 would have been the Celsius employee
20 dealing with any international agencies as
21 well in addition to ones in the United
22 States?

23 MS. BRIER: Objection to form.

24 Outside the scope.

25 You can answer.

223

1 THE WITNESS: The -- for the most
2 part, I should -- you know, I should
3 not have been the primary point of
4 contact for most regulatory agencies
5 with a -- you know, the big exception
6 being the ones that we were registering
7 with.

8 So, like, in the U.S., that's
9 FinCen. There are some state -- state
10 lending licenses that we held. And
11 then in Lithuania, we were registered.

12 But, yeah, other than that, like,
13 any place that we weren't registered,
14 any kind of discussions between the
15 regulators and the company would have
16 gone through the regulatory team --

17 BY MS. CORNELL:

18 Q. Okay.

19 A. -- or outside counsel.

20 Q. That's fair.

21 Does Celsius currently have a
22 marketing department?

23 MS. BRIER: Objection to form.

24 Outside the scope.

25 THE WITNESS: So, yeah.

224

1 Actually, that team was assigned to me
2 in July -- no. Sorry -- in September.
3 I mean, it's a very small -- very small
4 number of people that were remaining.

5 And then that team has been
6 reduced further. I think we have two
7 people in marketing, and, you know,
8 instead of it -- instead of thinking of
9 it as marketing, I would think of it
10 more as communications. So this group
11 is responsible for helping to manage
12 communications with our customers.

13 BY MS. CORNELL:

14 Q. For example, would that include
15 mass emailings to customers?

16 A. Yes. I just want to emphasize
17 that that happened right around the time of
18 Alex's -- you know, almost immediately
19 prior to -- a few days before Alex's
20 departure, he asked me to take -- take over
21 management of the people on the marketing
22 team.

23 Q. So approximately -- before that
24 date, who would have been running that
25 department?

225

1 MS. BRIER: Same objections.

2 THE WITNESS: Let's see. In
3 October 2021 -- I think it was around
4 that time -- Tushar Nadkarni. I can't
5 remember exactly how his last name is
6 spelled -- became our chief product
7 officer and chief marketing officer.

8 And he was -- he retained -- I
9 think actually he retained those
10 roles -- he retained the chief product
11 officer role, I think, until the time
12 he left the company in, I think, late
13 July.

14 And the chief marketing one Alex
15 took back, I think, like a month or two
16 before his departure.

17 BY MS. CORNELL:

18 Q. So prior to you taking on the
19 role, but during your tenure at Celsius, if
20 a mass mailing to customers was going be
21 sent out, it would be Tushar Nadkarni who
22 would have approved it or disapproved it?

23 A. From marketing content
24 perspective, yes, that would have been
25 Tushar. Regulatory -- you know, almost

226

1 certain -- actually, let me phrase it this
2 way.

3 If any kind of communications
4 with our customers went out that did not go
5 through our regulatory team, and in some
6 cases our legal team, there would be some,
7 you know, fallout after that, like, you
8 know, how could this have happened, what
9 broke down, that shouldn't have happened.

10 So generally all those
11 communications would have passed through
12 our regulatory and legal team.

13 Q. In addition?

14 A. In addition to...

15 Q. In addition to some -- whoever
16 was on the marketing team?

17 A. That's right, yep.

18 MS. CORNELL: I think that's all
19 I have for today. Thank you.

20 THE WITNESS: Thank you.

21 MS. BRIER: Thank you.

22 MS. CORNELL: Go off the record.

23 THE VIDEOGRAPHER: All right.

24 The time is currently 2:50 p.m. We're
25 going off the record for Media Unit

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1 No. 2. This is the end of Media Unit

2 No. 2 of today's testimony.

3 (Whereupon, a recess was taken at

4 2:50 p.m.)

5 THE VIDEOGRAPHER: All right.

6 The time is currently 3:00 p.m. This

7 is Media Unit No. 3 of today's

8 testimony, and we are back on the

9 record.

10 EXAMINATION

11 BY MS. RYAN:

12 Q. Hi. Good afternoon. For the
13 record, this is Abigail Rushing Ryan with
14 the Office of the Texas Attorney General
15 representing the Texas State Security Board
16 and the Texas Department of Banking.

17 Good afternoon, Mr. Blonstein.

18 How are you?

19 A. I'm doing okay. Good afternoon.

20 Q. It's been a long day, and I've
21 been in and out, and my colleague Layla
22 Milligan was going to do the questioning,
23 so if I repeat a question that's already
24 been covered, forgive me.

25 If I ask a really bad question,

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1 please ask me to rephrase it. I'm known
2 for asking bad questions.

3 And if you just don't understand
4 what I've said, feel free to let me know.

5 First, when you joined the
6 Celsius platform as a customer, what
7 version of the terms of use did you agree
8 to?

9 A. Yeah. I definitely would not
10 have paid attention to that as a customer,
11 but -- and I don't remember the exact month
12 that I joined -- you know, that I became a
13 customer, but I'm just going to reference
14 the date ranges for the terms of use in the
15 declaration. And my -- and it should have
16 been either Version 1 or Version 2.

17 Q. And when you --

18 A. It was --

19 Q. I apologize. Go ahead.

20 A. Sorry, sorry. I just wasn't sure
21 if you could hear me.

22 Q. I can hear you. I'm taking notes
23 simultaneously.

24 A. Okay.

25 Q. So there may be a pause.

229

1 A. Yeah. Sorry.

2 Q. So when you submitted your coins
3 to Celsius as a client, did you think you
4 had a separate wallet -- an individual
5 wallet?

6 MS. BRIER: Object to form.

7 THE WITNESS: No. No. I mean,
8 again, you know, from -- from also
9 being a -- someone in the industry,
10 my -- I had -- I had a rough idea of,
11 like, what was happening in terms of me
12 sending -- like, most cryptocurrency
13 exchanges work -- so most of my
14 experience in crypto has been on the
15 exchange side of things, and most
16 cryptocurrency exchanges have a similar
17 setup where there's a user-specific
18 deposit address, and then coins are
19 swept from that user-specific address
20 to a -- to a pooled omnibus wallet.

21 And that -- that was my
22 assumption, was that Celsius was
23 working in the same way.

24 BY MS. RYAN:

25 Q. And so did you actually know that

230

1 there was a main wallet or assume it?

2 A. At the time that I was a
3 customer, I assumed it.

4 Q. Do you remember about when you
5 learned, not assumed, that there was a
6 single main wallet?

7 MS. BRIER: Object to form.

8 THE WITNESS: It would have been,
9 let's say, in the first several months
10 after I joined in February. So
11 sometime, let's say, in, like, Q1 or
12 early Q2 2021.

13 And by -- the way I would have
14 come across it was just trying to
15 understand some of the current -- some
16 of the infrastructure for the company
17 so that I could better understand how I
18 might -- for new products that we were
19 proposing, how they might integrate
20 into the Celsius platform.

21 BY MS. RYAN:

22 Q. And just so you'll know, I am
23 strictly a bankruptcy lawyer. I am not an
24 expert in crypto in any stretch of the
25 imagination. So if I use a term that's

231

1 incorrect or need clarification because I'm
2 wrong in using a term, please let me know.
3 I -- that's very important.

4 So when did you learn or
5 approximately when did you learn that coins
6 that you deposited wouldn't be returned if
7 you were going to withdraw those coins,
8 basically you're not going to get the exact
9 same coins back; you'll get something back
10 equivalent?

11 MS. BRIER: Objection to form.

12 THE WITNESS: That was my
13 understanding, I would say, from the
14 outset was that I would not expect to
15 have received back the exact same coins
16 that I sent in.

17 Just, again -- just like the
18 expectation would have been the same
19 for, you know, my Coinbase account or
20 my Gemini account or my Kraken account
21 or my 50 other crypto accounts that
22 I've opened.

23 So, yeah, that was my
24 understanding from the outset.

25 ///

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1 BY MS. RYAN:

2 Q. Okay. So, to your knowledge --

3 we're shifting gears a little bit.

4 To your knowledge, has Celsius
5 ever completely registered with any state
6 or federal regulatory body --

7 (Audio distortion; stenographer
8 asks for clarification.)

9 BY MS. RYAN:

10 Q. -- or state regulatory body?

11 MS. BRIER: Objection to form.

12 Outside the scope.

13 You can answer.

14 THE WITNESS: I can answer?

15 So we -- the company was
16 registered with the -- with FinCen as a
17 money services business.

18 We had multiple either
19 notifications for our state license --
20 state lending, either a state like the
21 California DFPI for being a licensed
22 lender and then other -- other states
23 were -- we notified them or were in the
24 process of applying for lending
25 licenses.

233

1 We registered with Lithuania, and
2 I believe we put our name on the FCA
3 list for crypto service providers in
4 the UK. So those are the ones that I'm
5 aware of.

6 BY MS. RYAN:

7 Q. Okay. As far as money
8 transmission licenses in the United States,
9 what states is Celsius licensed in?

10 MS. BRIER: Objection to form.

11 Outside the scope of the terms of use
12 issues that are up today.

13 But you can answer to the extent
14 you know.

15 THE WITNESS: Yeah, I should
16 definitely know as the chief compliance
17 officer and having, like, the -- again,
18 my experience in crypto on the
19 compliance front was on BSA and ML
20 sanctions and state money transmitter
21 licenses.

22 I mean, trying to get those state
23 money transmitter licenses. And, to my
24 knowledge, we did not have any -- we
25 did not have any of those licenses in

234

1 place.

2 BY MS. RYAN:

3 Q. So as the CCO, were you involved
4 with any public disclosures?

5 MS. BRIER: Objection to form.

6 Outside the scope.

7 THE WITNESS: Yeah, some of the
8 questions -- like, there were similar
9 questions asked where -- you know, I
10 think my answer to that still applies,
11 which is that it's very likely that I
12 was copied on some -- you know, on
13 public -- on communications to our
14 customers and to the public.

15 But in no way was I -- I was not,
16 like, the approver. There may have
17 been some instances where somebody
18 asked me for feedback, and I provided
19 some feedback.

20 But, yeah, I think it was fairly
21 well understood across the
22 organization --

23 (Zoom disruption.)

24 BY MS. RYAN:

25 Q. Sorry about that. I apologize

235

1 for interrupting you.

2 A. No worries.

3 Yeah. So I was not a -- I was
4 not an approver -- generally, I was not an
5 approver for communications to customers
6 and the public.

7 Q. Thank you. Thank you for that.

8 And I apologize. That was my
9 nine-year-old son that just interrupted us.
10 Working from home has its challenges.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED] 236
2 [REDACTED]
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9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 BY MS. RYAN:

18 Q. Okay. And so kind of shifting to
19 more of the terms of use questions, does
20 Celsius maintain records for each
21 individual customer's terms of use
22 agreement?

23 For example, if I joined when
24 Celsius was brand new, you would have a
25 record of the terms of use that I

237

1 originally agreed to?

2 A. Based on the research that I did,
3 that is not something that we keep. So we
4 keep a record of whether -- you know,
5 whether you accepted or not, but not of
6 the -- like, there's no -- there's nothing
7 like an E-sign or, like, a copy of a signed
8 terms of use.

9 Q. Is there a date so that it could
10 be determined which -- you know, 1, 3, 6,
11 7, 8 -- terms of use were originally agreed
12 to?

13 A. So the -- our back office system
14 tracks every login of a customer to a
15 system. We check, like, the -- we know the
16 IP address.

17 We know -- you know, we have
18 different kind of different things that we
19 collect when a -- for every session that
20 the user has with us. And so it would be
21 easy for us to connect that to the date of
22 acceptance of the terms.

23 I'm not sure if that answered
24 your question, but basically we can tell
25 exactly when a user accepted the terms.

238

1 Q. That's helpful. Thank you.

2 So you said the back office
3 maintains those records.

4 What's the format? The type of
5 software? Is it Excel? Is it something
6 proprietary?

7 A. Yeah. So -- yeah. I apologize
8 for that. We call -- Back Office is the
9 name of our -- of our kind of home-grown,
10 internally developed administration
11 platform for our customers.

12 So it's basically like a user
13 interface on top of a database. And
14 different departments at the company use it
15 for different purposes. Like our
16 compliance team would use it mostly related
17 to KYC and other -- and other purposes,
18 whereas customer service would use it for,
19 you know, reviewing activity of a customer.

20 Q. Thank you. That's helpful. I
21 thought you were using the term "Back
22 Office" to mean just the folks that
23 actually run the show.

24 Thank you for that.

25 A. Sure.

239

1 Q. So as far as keeping the record
2 of each logon, which department maintains
3 that?

4 A. It's done in a -- yeah, a fully
5 automated way by the -- by the system
6 itself.

7 So basically there's an entry in
8 the database for each login session, and,
9 you know, we collect are the IP address, we
10 collect, you know -- I'm trying to see if I
11 can jog the memory of, like, what that
12 screen looks like.

13 But, you know, you can basically
14 see every login event for a customer.

15 That's logged, and then it's viewable in
16 the Back Office. Sorry. I'm not sure if I
17 answered your question.

18 Q. No, that's helpful. It sounds
19 like it's automated and the computer
20 collects it and then you guys can use it as
21 necessary.

22 Is that roughly fair?

23 A. That's correct.

24 Q. So if someone wanted a record of
25 when these customers logged on and agreed

240

1 to the terms of use, is that a report you
2 can print? Is it easily accessible?

3 A. Yes, it is. And that was the
4 basis for the data that was in my
5 declaration. That was how we compiled --
6 that was how our data team compiled the
7 report on which users -- you know, the
8 percentages of users that had accepted
9 different terms of use.

10 Q. I saw that -- the chart. That is
11 helpful.

12 So under Version 1, it says
13 4 percent of accountholders accepted that.

14 So in the report, can you drill
15 down and see who those 4 percent are?

16 A. That would -- it would be
17 possible to -- to do that. It would -- I'm
18 sorry. It would be possible to produce a
19 report like that. I think that the exact
20 version of the data pull -- the data query
21 that we did to produce these tables was
22 aggregated.

23 But we would have the underlying
24 data that would allow us to -- to identify
25 the users for each one -- for each terms of

241

1 use.

2 Q. Do you know how Celsius verified
3 a customer's or investor's residency and
4 address to know where they're located?

5 A. Yeah. So that's a little bit of
6 a complex -- I mean, there's a little bit
7 of complexity here.

8 When we collect -- so we
9 collect -- we collect the information from
10 customers as part of the -- of the
11 onboarding process. We ask them for their
12 address. In many cases, we ask them for a
13 form of government-issued ID.

14 And we're looking at both of
15 those things to determine their eligibility
16 for the service. Because we didn't offer
17 our services in every state in the U.S. and
18 also in some countries.

19 We also used the IP address that
20 they log in from, and we use kind of
21 geolocation from that IP address to
22 determine their eligibility.

23 So it's through a combination of
24 those things that we -- that we make a
25 determination on their residency.

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1 Q. And you have a team internally
2 that does that?

3 A. Yeah. That's right. So, I mean,
4 the vast majority of our customers -- you
5 know, for a lot of 2021, we were
6 onboarding, you know, tens of thousands of
7 customers a week.

8 So the vast majority of those
9 customers, they flow through our onboarding
10 process in a fully automated way. So the
11 app and the partners that we use to
12 authenticate or to validate the users, you
13 know, are processing the information that
14 they input.

15 We run them against sanctions
16 list. We run them -- you know, we look
17 for -- we look at the validity of their --
18 of their ID, and only if they kind of fall
19 out of that process does a human -- you
20 know, does a person look at it.

21 So what I mean by "fall out" of
22 it is that, like, for example, if our
23 KYC -- if our ID validation company --
24 sometimes people call them KYC vendors --
25 if they flag the person as, you know, as a

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1 potential name match for sanctions or some
2 other kind of issue or if the ID -- let's
3 say there's glare on the ID or, you know,
4 any number of issues, they'll be flagged
5 for a person to review.

6 And generally that review would
7 happen first by our customer care team.
8 And if there wasn't, like, an easy way for
9 them to resolve -- if the resolution to
10 that wasn't very straightforward, they
11 would escalate that to our compliance
12 operations team, which reported in to me.

13 Q. Thank you.

14 A. Sure.

15 Q. Do you know how much -- how many
16 coins is contained in the UTXO blockchain?

17 MS. BRIER: Objection to form.

18 Outside the scope.

19 You can answer.

20 THE WITNESS: So, yeah. There
21 are -- there are -- there are several
22 blockchains that use the UTXO method
23 like Bitcoin. Dogecoin is another
24 example.

25 And so if you're asking, like,

244

1 how many -- how many Bitcoin are there
2 on the Bitcoin blockchain?

3 BY MS. RYAN:

4 Q. That Celsius has or does business
5 with.

6 MS. BRIER: Same objections.

7 Go ahead.

8 THE WITNESS: I actually don't --
9 yeah, I don't have that data at hand.
10 But, you know, like, approximate number
11 at -- yeah, actually I don't have that
12 data at hand.

13 And there's a question, I
14 think --

15 BY MS. RYAN:

16 Q. That's fine.

17 A. Yeah.

18 Q. I don't want you to guess. If
19 it's not at hand, then -- yeah, let's
20 not -- let's not guess.

21 So in ordinary course of
22 business, how does Celsius record digital
23 assets that correspond to the earn account
24 that's on their books and records?

25 MS. BRIER: Objection to form.

245

1 Outside the scope.

2 You can answer.

3 THE WITNESS: How do we account
4 for that on our books and records? So
5 like the transactions itself? For
6 example, a deposit transaction from a
7 user where they would transfer coins to
8 Celsius, those were recorded on the
9 company's ledger.

10 In terms of, like, how that was
11 eventually translated into our, you
12 know, financial statements, that's not
13 a -- that wasn't in my lane.

14 BY MS. RYAN:

15 Q. The deposit transaction that's
16 reported on the leverage, you know, is what
17 I was asking. That was my question. Thank
18 you.

19 A. Sure.

20 Q. Who's in charge of maintaining
21 the ledger?

22 A. So the ledger itself is kind
23 of -- you know, I would say that's our
24 core -- the core piece of software for the
25 company and would be maintained by the

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1 engineering department.

2 Q. And is this a piece of software,
3 the ledger, that your engineers wrote?

4 It's proprietary?

5 MS. BRIER: Objection to form.

6 Outside the scope.

7 You can answer.

8 THE WITNESS: That's my
9 understanding, yeah. It's a little
10 bit -- it's -- that -- it wasn't
11 necessarily something I had looked into
12 in the past, yeah, or had looked into.

13 But my assumption is that that's
14 software that we wrote.

15 BY MS. RYAN:

16 Q. And are there any policies or
17 procedures in place to make sure the
18 accounting on the ledger is accurate?

19 MS. BRIER: Objection to form.

20 Outside the scope.

21 You can answer.

22 THE WITNESS: I'm not -- I'm not
23 aware of those. I'm not aware of those
24 policies or procedures. Yeah, I think
25 I have to say that. I'm not aware of

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1 them.

2 I guess they exist, but that
3 wasn't part of my -- I had a lot of
4 other policies and procedures to worry
5 about, so I was focused on those, on
6 the ones that related to compliance --
7 our compliance processes.

8 BY MS. RYAN:

9 Q. And what's the name of the
10 software program used for the ledger
11 account -- accounting?

12 MS. BRIER: Same objections.

13 Go ahead.

14 THE WITNESS: Yeah, it's
15 proprietary -- I believe it's
16 proprietary.

17 Now, like, just a -- to give you
18 an idea, if the company had started a
19 couple of years later, there are
20 vendors -- you know, there are other
21 providers that you could acquire
22 software like this for -- I mean,
23 sorry, that you could acquire software
24 like this from a vendor.

25 At the time the company was

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1 started, I don't think there were many
2 options, so most of the companies that
3 started around this time were -- were
4 and are using home -- home-grown
5 systems for this.

6 BY MS. RYAN:

7 Q. So moving into the marketing role
8 and marketing information, to your
9 knowledge, have any communications been
10 removed or edited or altered from the
11 website since March 1 of this year?

12 MS. BRIER: Objection to form.

13 Far outside the scope of this
14 deposition.

15 But to the extent you know, you
16 can answer, to the extent it doesn't
17 implicate privileged information.

18 THE WITNESS: Yeah, it wasn't --
19 I was -- I was not really -- I was not
20 involved in those processes.

21 Yeah, and I couldn't -- even if I
22 was copied on emails about some of
23 these things, it's not something I
24 would have allocated -- you know, I
25 just wouldn't have spent the time to

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1 look into it because of other areas of
2 focus for me.

3 BY MS. RYAN:

4 Q. So do you recall if there were
5 any disclaimers or other information in the
6 AMAs or other public-facing advertisements
7 that expressed something to the extent of
8 these expressed may not be those of Celsius
9 and may not match the terms of use?

10 MS. BRIER: Objection to form.

11 Outside the scope.

12 You can answer, if you know.

13 THE WITNESS: I'm not sure. I
14 mean, I do remember on -- you know,
15 some of the AMAs, there was, you know,
16 something along the bottom of the
17 screen during different times that
18 said, you know, something along the
19 lines of not financial advice and, you
20 know, had various disclaimers.

21 But it wasn't my -- my area to
22 make sure that those were there or when
23 they appeared or that kind of stuff.

24 BY MS. RYAN:

25 Q. So did Celsius ever mail, as in

250

1 like U.S. email, a complete copy of the
2 terms of use to customers?

3 A. Not to my knowledge.

4 Q. And I believe you testified
5 earlier the terms of use weren't emailed
6 either; is that right?

7 MS. BRIER: Objection to form.

8 THE WITNESS: Correct. Yeah, we
9 would email them -- there were cases
10 where we emailed with links to the
11 terms of use, but not with the -- we
12 didn't send the terms of use
13 themselves.

14 BY MS. RYAN:

15 Q. What role, if any, did the
16 Celsius board play in the decision to
17 change the terms of use?

18 A. I wasn't involved in the -- in
19 really the formulation of, you know, the
20 vast majority of the terms of use, so I
21 wasn't part of the decision-making process
22 or included in -- you know, included in any
23 kind of discussion at the board level about
24 those changes.

25 So I'm not -- you know,

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1 unfortunately, I don't -- yeah, I can't
2 speak to that.

3 Q. Do the terms of use through the
4 year 2020 transfer ownership of coins to
5 Celsius?

6 MS. BRIER: Objection to form.

7 THE WITNESS: Yeah, yeah. Sorry.

8 Can you -- and you're asking did the
9 terms of use transfer ownership of
10 coins through September 2020 to
11 Celsius?

12 BY MS. RYAN:

13 Q. Yes.

14 A. And my -- yeah, that was my
15 understanding. Again, you know, I became a
16 customer in the spring of 2020, and that
17 was my recollection at the time.

18 And actually, even in 2019, the
19 first time that I heard about Celsius,
20 that's what I remember the conversation --
21 you know, that watercooler moment that I
22 mentioned -- I remember people talking
23 about that.

24 Q. Did you know if the actual terms
25 of use stated that, though?

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1 MS. BRIER: Objection to form.

2 THE WITNESS: Yeah, I'd have to
3 go back and scan the -- those terms of
4 use. But, yeah, to my -- my
5 understanding was that the company has
6 been pretty consistent throughout the
7 terms of use for -- the terms of use
8 with its customers about the transfer
9 of title to the company of the coins
10 that they send in.

11 BY MS. RYAN:

12 Q. So you don't know if the terms of
13 use actually stated the ownership
14 transfers, right?

15 MS. BRIER: Object to form.

16 THE WITNESS: I can't -- yeah,
17 without, like, going back and reviewing
18 each one of them -- I mean -- so let me
19 say this another way.

20 You know, in preparation for the
21 declaration, I did review those. And
22 the impression that I have is that in
23 the terms of use, customers were
24 informed that they were transferring
25 ownership of the coins from themselves

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1 to the company. So that is my
2 impression based on my review of the
3 terms of use.

4 BY MS. RYAN:

5 Q. So were users allowed to remain
6 on the system if they didn't agree to
7 subsequent versions of the terms of use?

8 A. Yeah, starting with, you know,
9 Version 6 and 7 of the terms of use, we
10 implemented and we -- this is detailed in
11 the -- in my declaration -- implemented --
12 or sorry. We followed up with user --
13 sorry.

14 In the notification to customers,
15 we explained to them that, you know, if
16 they did not accept the terms of use or if
17 they did not agree to the terms of use,
18 they would need to close their account and
19 would no longer earn rewards through the
20 program.

21 Q. And how would they close their
22 account if they didn't agree to the terms
23 of use?

24 A. Yeah, there was a -- there was
25 a -- in the text of the -- in this -- in

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1 the user interface for where we presented
2 the terms of use to customers, we said --
3 I'm just reading from that -- from page 17
4 of my declaration, A-8.

5 It says, "If you do not agree to
6 our updated terms of use and privacy
7 policy, please contact Celsius support to
8 close your account."

9 Q. And would that be the same
10 whether they were closing a custody account
11 or an earn account?

12 MS. BRIER: Objection to form.

13 You can answer.

14 THE WITNESS: From my
15 understanding, yeah, there shouldn't --
16 there shouldn't have been a difference.
17 Because this was -- this was more a
18 matter of whether they -- of the status
19 of their account.

20 So if they had been suspended for
21 not accepting -- you know, basically
22 passing the deadline that we had set
23 for them to accept the terms of use,
24 then just, you know -- if your account
25 is suspended, you can't withdraw assets

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1 without assistance from customer care.

2 BY MS. RYAN:

3 Q. So timing wise, they click no, I
4 don't agree to the terms of use, and their
5 ability to access their money, whether it's
6 in a custody account or an earn account, is
7 suspended, so they can't touch their money,
8 and they would have to then contact
9 customer care; is that the process?

10 MS. BRIER: Objection to form.

11 Outside the scope.

12 And I think there might be some
13 confusion.

14 Were you reading from the
15 declaration as it relates to the
16 Version 6?

17 THE WITNESS: Yeah, Version 6 and
18 7, yep.

19 MS. BRIER: Just for clarity --
20 purpose of clarity of timing, Ms. Ryan,
21 I think he was looking at Version 6
22 screenshots in his -- in his
23 declaration. Just wanted to make the
24 record clear there for your
25 questioning.

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1 BY MS. RYAN:

2 Q. Thank you.

3 But this process changes for

4 Version 7 and 8?

5 A. We didn't have -- yeah. So on --
6 on Version 6 and 7, which were largely, you
7 know -- from my understanding, were largely
8 centered around the change in relationship
9 from -- for the change in the terms of use
10 from the Celsius UK entity to the U.S.
11 entity.

12 There was a -- you know, there
13 was this multiphase process, and there were
14 specific deadlines for customers. You're
15 asking subsequent to that, whether we had
16 deadlines upon which we suspended accounts?

17 I don't think that we --

18 Q. Yeah, just -- just if the
19 customer didn't agree to the new terms of
20 use.

21 MS. BRIER: Object to form.

22 THE WITNESS: I would need to go
23 back and just refresh my memory on
24 that. I don't remember -- I was
25 focusing -- I focused my time, like, on

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1 this -- in this Version 6 and 7.

2 So I'm not sure -- yeah, yeah.

3 I'd have to go back and refresh my
4 memory on that, whether we implemented,
5 like, a deadline for subsequent updates
6 to the terms of use and whether we
7 suspended accounts based on that.

8 I think it was a pretty -- it was
9 a fairly unique situation with
10 Version 6 and 7, because the
11 relationship was changing from the UK
12 and the U.S., and, you know, we were
13 not supposed to be conducting --
14 we were not supposed to be offering
15 services from the UK entity, you know,
16 going forward.

17 BY MS. RYAN:

18 Q. Okay. Thank you.

19 A. Sure.

20 Q. So from day one, has Celsius kept
21 the coins in a main wallet as opposed to
22 individual wallets?

23 MS. BRIER: Objection to form.

24 Outside the scope.

25 But you can answer.

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1 THE WITNESS: So in my
2 declaration related to custody, I
3 primarily, like, focused -- you know,
4 made sure that I got up to date,
5 somewhat fluent in the wallet
6 architecture and the flow of coins, you
7 know, from the period around the
8 release of the custody product.

9 I don't think that there has
10 been -- I mean, obviously the release
11 of the custody -- the custody account
12 was a big change, but I think the flow
13 of coins from an external wallet -- a
14 customer's external wallet to their
15 deposit address and then from that
16 deposit address to the company's main
17 wallet, I think that that flow has
18 largely remained the same since the
19 company -- since the company started.

20 BY MS. RYAN:

21 Q. To your knowledge, were customers
22 informed that -- whether through terms of
23 use when, you know, terms of use -- let's
24 say before you get to 6, 7 and 8 versions,
25 informed that their coins were going to be

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1 placed in the omnibus main wallet as
2 opposed to individual wallets?

3 A. I'm not -- yeah, if they were
4 informed, that definitely -- I missed it as
5 a customer. So I don't think -- I don't
6 remember that being -- actually, I'd have
7 to review that.

8 I don't remember -- that wasn't
9 something that stood out to me as a
10 customer. I understood that to be the
11 case, but I don't recall off the top --
12 yeah, I don't recall right now whether that
13 was something we called out in the terms of
14 use.

15 Q. What information was provided to
16 customers regarding the frictional wallet?

17 MS. BRIER: Objection to form.

18 THE WITNESS: I think, like,
19 fairly -- if any, it would have been
20 very limited. The word -- I mean, the
21 word -- to my knowledge, I don't know
22 who came up with the term "frictional
23 wallet," but that's not, like, an
24 industry term, to my knowledge.

25 So I -- you know, if you -- if

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1 you told someone about a frictional
2 wallet, they would probably scratch
3 their heads and wonder what that is.

4 So, yeah, I would be surprised if
5 that was something that we talked to
6 customers about.

7 BY MS. RYAN:

8 Q. So what is your understanding as
9 why Celsius [audio distortion] --

10 THE STENOGRAPHER: Excuse me,
11 Counsel. Could you repeat that? I
12 didn't hear you clearly.

13 BY MS. RYAN:

14 Q. Sure.

15 What is your understanding as to
16 why Celsius speaks to self-stable coins
17 versus other crypto assets?

18 A. Just actually, I have no -- I
19 don't have -- I'm not involved in the
20 decision about, like, what coins to sell or
21 what coins to -- you know, to not sell.

22 You know, just -- just based on
23 my own thought process, it makes sense that
24 the currency -- the exposure -- you know,
25 the -- if you sell Bitcoin, you're selling

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1 it now at a certain price relative to the
2 dollar versus stable coins, you know,
3 roughly remain pegged to the dollar.

4 So there shouldn't be any kind
5 of -- you know, you're not selling a coin
6 when its value is, let's say, low. So it
7 minimizes the FX exposure.

8 Q. And do you know why unaccredited
9 accountholders were grandfathered into the
10 earn account after the custody program was
11 created in April of this year?

12 MS. BRIER: Objection to form.

13 Outside the scope.

14 But you can answer to the extent
15 you know.

16 THE WITNESS: Yeah, I wasn't
17 involved in that decision. I wasn't
18 involved in it, yeah.

19 MS. RYAN: Thank you for your
20 time. I'll pass the witness at this
21 point.

22 THE WITNESS: Thank you.

23 MS. BRIER: Thank you.

24 MS. CORDRY: This is Karen
25 Cordry. Last name is spelled

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1 C-o-r-d-r-y. I'm with the National
2 Association of Attorneys General, and
3 I'm representing the roughly dozen
4 states or so that I filed an appearance
5 for, which I can't possibly give you
6 all their correct names. But I'm the
7 attorney for them, in any case.

8 EXAMINATION

9 BY MS. CORDRY:

10 Q. And I do just have a very few
11 questions to follow up with that.

12 One, Mr. Blonstein, at a number
13 of points including very recent -- in your
14 most recent answers, you've indicated that
15 some of the things that you understood
16 about the accounts and how they would work
17 and so forth were based on your own
18 experience with other crypto before you
19 ever came to the company; is that correct?

20 A. That's correct.

21 Q. Okay. Do you have any knowledge
22 as to how many customers had any kind of
23 similar experience or knowledge about
24 crypto before they came to -- want to do
25 business with Celsius?

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1 MS. BRIER: Objection to form.

2 Calls for speculation.

3 Go ahead.

4 THE WITNESS: Yeah. Actually, I
5 think this is, like, one of the
6 interesting things about -- about
7 Celsius, and this is one of the things
8 that I was hoping to improve for the
9 company was we really -- something like
10 99 percent of our customers acquired
11 their first crypto somewhere else, so
12 pretty much every single one of our
13 customers started at a Coinbase or a
14 Binance or somewhere else.

15 So -- and I say that, and I can
16 be sure of that, because we see where
17 their coins come from, and we had --
18 you know, just frankly speaking, we had
19 very crappy on-ramps, meaning we had
20 very poor implementation of being able
21 to move someone from fiat into
22 cryptocurrency.

23 The vendor that we had integrated
24 with before I joined, you know, charged
25 very high rates. We didn't benefit

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1 from that financially at all.

2 So that's a long way of saying I
3 think that, you know, the vast majority
4 of our customers were customers of
5 another crypto service provider and --
6 at least one. And so would have had
7 experience with other cryptocurrency
8 platforms.

9 We were not --

10 BY MS. CORDRY:

11 Q. Okay.

12 A. I would say, largely, we were not
13 working with novice cryptocurrency
14 customers.

15 Q. On those platforms, do you know
16 if they were ones where they were
17 predominantly, I will call them custody
18 accounts where they are -- you know, they
19 were just holding in crypto, or were they
20 ones similar to Celsius where there was
21 some kind of investment aspect to them?

22 MS. BRIER: Objection to form.

23 Outside the scope.

24 You can answer, if you know.

25 THE WITNESS: Yeah. Kind of --

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1 for most -- for a lot of the crypto --
2 cryptocurrency service providers,
3 especially in the U.S., kind of the
4 base relationship is custody.

5 You know, obviously a large
6 number of our customers came from
7 BlockFi, which has a -- which had a
8 similar kind of legal relationship with
9 their customers.

10 But, yeah.

11 BY MS. CORDRY:

12 Q. And what do you mean by "similar
13 legal relationship"?

14 A. My understanding was that
15 customers of BlockFi were doing something
16 similar in terms of assigning ownership of
17 their coins to BlockFi. I don't know that
18 actually first hand.

19 (Simultaneous unreportable
20 crosstalk occurs among parties.)

21 BY MS. CORDRY:

22 Q. So excuse me. I'm sorry. I
23 started to talk over you.

24 A. I definitely reviewed the BlockFi
25 terms of use at some point, but all of that

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1 knowledge has been pushed out of my brain
2 by having to review all of these terms of
3 use and declarations and stuff like that.

4 So maybe I'm -- maybe I'm getting
5 it wrong. But what I remembered was -- I
6 remember there being a very close
7 similarity between the BlockFi terms of use
8 and the Celsius terms of use.

9 Q. And those terms of use -- when
10 did you review them --

11 MS. BRIER: Object to form.

12 BY MS. CORDRY:

13 Q. -- the BlockFi terms of use?

14 A. I'm -- yeah, I really -- I
15 can't -- I couldn't say. I mean --

16 Q. Before you came to Celsius or
17 after you came to Celsius?

18 A. I believe -- yeah, so I did -- I
19 became a -- I was a BlockFi customer before
20 I was a customer -- sorry -- before I
21 became an employee of Celsius.

22 And so I would have reviewed the
23 terms of use or terms of service, whatever
24 they call it.

25 Q. Okay. In terms of, again, your

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1 experience and your knowledge, you said a
2 certain of the customers came from BlockFi.

3 Where -- the other ones that came
4 from the custody account, would those
5 people have had anything similar to this
6 where there was some sort of transfer of
7 ownership?

8 MS. BRIER: Objection to form.

9 Outside the scope. Lack of foundation.

10 To the extent you know, you can
11 answer.

12 THE WITNESS: So anyone who's a
13 customer of -- like, generally -- so
14 not generally. Specifically I can
15 think of Binance, Binance.com, the
16 global -- the overseas platform that
17 was allowing U.S. users to use the
18 platform, you know, until -- I don't
19 know -- 20 -- maybe 2020 or 2021.

20 So customers -- U.S.-based
21 customers and international customers
22 could participate in their, you know,
23 their earn -- their earn programs or
24 whatever Binance called it, kind of
25 similar programs.

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1 I don't remember looking at their
2 terms of service or terms of use to see
3 if it was the exact relationship. But,
4 in other words, it's -- it's likely
5 that some of our customers were
6 accustomed to that.

7 And I can say -- what I can say
8 is that anytime there was a change in
9 earn rates from platform to platform,
10 you would see pretty significant
11 movements of coins between them. So if
12 BlockFi lowered their interest rate, we
13 would see a rush of people coming from
14 BlockFi to Celsius.

15 If Binance increased their rate,
16 we might see a bunch of assets leave
17 our platform and go to Binance.

18 So, you know, you could call
19 them, like, rate shoppers or however
20 you -- you know, want to categorize
21 them. But, you know, we had a fair
22 number of customers that were looking
23 for the best yield and were moving
24 their coins. And so our assumption was
25 that they were pretty familiar with the

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1 terms.

2 BY MS. CORDRY:

3 Q. Okay. They knew the terms of the
4 earn account and the interest rates, in any
5 case.

6 But, again, my question was -- my
7 follow-up question was, with respect to
8 ones that were being held in custodial
9 accounts of which you said -- you said
10 there's probably about half of them were of
11 that nature?

12 Would those people have had any
13 basis to assume that there was gonna be any
14 kind of transfer of ownership of their
15 coins?

16 MS. BRIER: Objection to form.

17 Outside the scope. Calls for
18 speculation.

19 You can answer.

20 THE WITNESS: Yeah. I mean, I'm
21 not -- it's really hard for me to say.
22 Yeah, so -- yeah, I have no knowledge
23 of -- you know, I can't really say,
24 like, what the -- what these customers
25 were doing.

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1 I understand your point that
2 they -- you know, maybe -- you know,
3 there's a convention in cryptocurrency
4 for U.S. providers of custody, and that
5 these customers may not have understood
6 the difference in the -- in the legal
7 relationship.

8 So I understand your point.

9 BY MS. CORDRY:

10 Q. Because, you know, again, as I
11 said, from listening to your testimony, it
12 did appear that a fair amount of your
13 understanding of the terms of use for
14 Celsius was based on what you already knew
15 about the way the business operated from
16 your own internal knowledge, which other
17 people might not have. Would that be a
18 fair statement?

19 MS. BRIER: Object to form.

20 THE WITNESS: Yeah, yeah. I
21 mean -- but, yeah, that's -- that's
22 accurate.

23 Again, like, I would also refer
24 to the fact, you know, that pretty much
25 all of our customers had acquired

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1 cryptocurrency elsewhere. So, like,
2 these were not -- we didn't really --
3 we wouldn't -- I wouldn't have
4 categorized our customers as, like,
5 kind of newbies to crypto, so I would
6 have expected them to be familiar with
7 the basics.

8 But, yeah, I understand your
9 point.

10 BY MS. CORDRY:

11 Q. And in terms of what customers
12 might understand about how an operation
13 worked with what you had there in this earn
14 account -- and I personally do my own
15 investing through T.D. Ameritrade, and I
16 have it in a variety of mutual funds,
17 stocks and bonds and so forth.

18 I choose the funds, but once I've
19 invested my money with them, they invest it
20 how they see fit.

21 Would I consider that -- or would
22 you consider that kind of investment
23 process similar to what Celsius is doing
24 with the funds that they have?

25 MS. BRIER: Objection to form.

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1 THE WITNESS: I'm sorry. So
2 you're saying through T.D. Ameritrade,
3 you choose -- you allocate your assets
4 to a -- to a fund manager?

5 BY MS. CORDRY:

6 Q. Vanguard index funds and so
7 forth, yes. And when they -- when it's
8 invested in those funds, is that similar to
9 what -- you know, functionally is happening
10 when somebody turns over their money to
11 Celsius in these earn accounts?

12 MS. BRIER: Same objection.

13 THE WITNESS: Yeah, I don't --
14 actually, to answer your question, I
15 need to make sure I heard you. Sorry.

16 What's the -- what's the product
17 that you would -- would be investing in
18 T.D. Ameritrade?

19 BY MS. CORDRY:

20 Q. Something like a Vanguard index
21 fund or a stock market fund or a bond fund.

22 A. I see.

23 Q. Through the umbrella of T.D.
24 Ameritrade.

25 MS. BRIER: Same objection.

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1 THE WITNESS: So this is where --
2 yeah, I would say really gets outside
3 of my area of expertise.

4 I didn't spend -- the only time I
5 ever spent thinking about, you know,
6 securities, you know, it was -- was in
7 my time at exchanges where we looked
8 at -- we used, like, the Crypto Rating
9 Council's framework for assessing
10 whether we would list a token.

11 But in terms of, like, similarity
12 of Celsius's products to securities,
13 that wasn't really something that I
14 spent time on. We had other people
15 with -- you know, with a lot more
16 relevant experience in that area.

17 BY MS. CORDRY:

18 Q. Did you -- I'm sorry. Strike
19 that amount.

20 Was there any consultation in
21 terms of drafting these terms of use and
22 reviewing them -- in terms of looking at
23 documents from those kind of businesses
24 like T.D. Ameritrade and other kinds of
25 securities investments and the kind of

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1 terms of use that those firms use, was
2 that -- were any of those documents
3 consulted or considered?

4 MS. BRIER: Objection to form.

5 THE WITNESS: Were -- I'm sorry.

6 Can you repeat the question?

7 BY MS. CORDRY:

8 Q. When there was being these
9 drafting of these terms of use documents,
10 was there any consultation, any
11 consideration, any review of documents for
12 other kinds of investments like these
13 securities firms like the T.D. Ameritrade
14 and so forth to see what kind of terms of
15 use they had with their customers?

16 MS. BRIER: Objection to form.

17 And you can answer, but to the
18 extent it -- your answer includes
19 communications with counsel, exclude
20 those communications.

21 THE WITNESS: Yeah, because I
22 wasn't involved in the drafting of
23 these for -- you know, for the most
24 part, I mean, if there was that kind of
25 review that was done, you know, I

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1 wouldn't have been an active
2 participant in that. So, yeah,
3 unfortunately, I can't speak to it.

4 The -- you know -- and, I mean,
5 just -- there was -- I was more
6 involved, for example, when we were
7 rolling out the swap feature.

8 And so for that, we were
9 referring to competitor terms of use in
10 terms of how to -- to make sure we were
11 talking about that in a way that was
12 consistent with the industry -- with
13 industry practices.

14 But, yeah, for, like, earn or our
15 lending product, I wasn't really
16 involved in it.

17 BY MS. CORDRY:

18 Q. Now, again, your view is that
19 because you think that these customers are
20 somewhat sophisticated with crypto, that
21 they would understand from the terms of
22 use -- that they would read them the same
23 way you do; is that a fair statement?

24 MS. BRIER: Objection to form.

25 THE WITNESS: Probably, I think,

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1 that a lot of people -- you know, I
2 think it's reasonable to assume that
3 people may not -- some people may not
4 pay attention to kind of the -- you
5 know, what people sometimes
6 characterize as the fine print.

7 But I thought, like, in the
8 example of our -- the release of our
9 terms of use 6 and 7 where we
10 specifically called out, you know, hey,
11 you might be tempted to skip this, but
12 you should really read this, I thought
13 this was an effort on the company's
14 part to really reinforce to customers
15 the importance of reading it.

16 But generally, I would say, that
17 I was under the impression that
18 customers were aware of the -- of the
19 structure of the relationship between
20 the company -- between them and the
21 company.

22 BY MS. CORDRY:

23 Q. Do you know if there was ever any
24 point at which your customers -- was there
25 ever any attempt to talk to certain

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1 customers -- a sample of customers and ask
2 them, okay, what do you actually understand
3 after having read the terms of use, this
4 relationship to be?

5 Were there ever any actual going
6 back to customers and talking to them about
7 what they understood?

8 MS. BRIER: Objection to form.

9 THE WITNESS: I'm not aware of
10 any.

11 BY MS. CORDRY:

12 Q. Okay. For instance, so there
13 would never have been something where you
14 came to somebody and said, you read the
15 full terms of use, you see there where it
16 says repeatedly that you're loaning your
17 money to Celsius, but do you understand by
18 that that you're actually transferring
19 ownership to Celsius?

20 MS. BRIER: Same objection.

21 THE WITNESS: Yeah, to my
22 understanding -- or I'm not aware of
23 anything -- aware of anything -- I'm
24 not aware of that happening -- of us
25 reaching out to customers to confirm

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1 their understanding beyond, you know,
2 the acceptance of the terms in the app.

3 BY MS. CORDRY:

4 Q. And those terms do include a
5 large number of references to loaning your
6 assets to Celsius, correct?

7 A. That's correct.

8 Q. And, again, I think this goes
9 back to the last question or so -- to some
10 of the questions that were asked at the
11 beginning.

12 Typically, when you talk about
13 loaning something to someone else, you've
14 considered that you've actually transferred
15 ownership to that person?

16 MS. BRIER: All right. Object to
17 form.

18 You can answer.

19 THE WITNESS: Sorry. I didn't
20 catch the question part.

21 BY MS. CORDRY:

22 Q. Okay. In common English
23 parlance, when you talk about loaning
24 something that you own to someone else, you
25 believe you are transferring your ownership

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1 of that asset to the other person?

2 MS. BRIER: Objection to form.

3 THE WITNESS: Yeah, I confirm

4 common understanding -- yeah, when I

5 say "loan," yep, I understand that.

6 I also think, you know, from --

7 from my own understanding as a

8 customer, like, that whole not your

9 keys, not your coins -- like, the

10 second you transfer your coins out of

11 your control to someone else, you're --

12 you know, you're -- you're taking on --

13 you're taking on risk by giving up

14 control.

15 But I understand the point.

16 BY MS. CORDRY:

17 Q. I understand. I understand. But

18 when I -- when I loan you my car, I'm

19 giving up control over my car while you're

20 out driving around. You might smash it up.

21 But it would still be my car,

22 would it not?

23 MS. BRIER: Objection to form.

24 THE WITNESS: Yeah, I agree. It

25 would still be -- it would still be

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1 your car.

2 MS. CORDRY: Okay. I believe
3 that's all the questions I have.

4 MS. BRIER: All right. Thank
5 you.

6 Any other questions before we
7 move to pro se folks?

8 All right. I think we've been
9 going for a bit of time now. Let's
10 take a 10-minute break, and then we'll
11 get into the pro se questioning. So
12 we'll come back at 4:05.

13 We can go off the record. Thank
14 you.

15 THE VIDEOGRAPHER: All right.
16 The time is currently 3:56 p.m., and
17 we're going off the record for Media
18 Unit No. 3 of today's testimony.

19 (Whereupon, a recess was taken at
20 3:56 p.m.)

21 THE VIDEOGRAPHER: All right.
22 The time is currently 4:14 p.m. We are
23 back on the record for Media Unit No. 3
24 for this testimony -- for today's
25 testimony.

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1 EXAMINATION

2 BY MR. CREWS:

3 Q. Hi. My name is Cameron Crews.

4 I'm a pro se creditor, and I created my
5 Celsius account in August of last year.

6 I understand, based on your
7 testimony today, that you opened your
8 account with Celsius in the spring of 2020;
9 is that right?

10 A. Yeah, roughly. I mean, I don't
11 remember the exact date.

12 Q. And you said today, if I'm
13 characterizing you correctly, that you
14 reviewed the terms of service and you
15 understood that you were giving up your
16 title in return for awards?

17 A. That's right.

18 Q. And you also said at the time
19 that you felt like it was a good decision?

20 A. It was a -- like, I made the
21 trade-off decision, yeah. I made the
22 trade-off decision. Was it a good
23 decision? Yeah, in retrospect, maybe not;
24 so...

25 Q. Yeah. Would you be surprised to

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1 learn that most customers such as myself
2 don't think it was a good decision to have
3 deposited with Celsius?

4 A. And I share your frustration.

5 I'm a customer also.

6 Q. And how do you know that
7 you've -- you've already spoken to this
8 somewhat today, but how do you know that
9 the users accepted the terms of use?

10 A. I'm sorry. You're asking how do
11 I know they accepted?

12 Q. Yeah.

13 A. Just by the automated system that
14 we have to track it.

15 Q. So you're tracking, you said IP
16 address for, like, the date of time and
17 login, metadata around people's connection
18 to the application?

19 A. I mean, that's how we verify.
20 That's how we -- we capture kind of the
21 session for when the user connects to our
22 system.

23 And then we have the action --
24 the various actions that they take, like,
25 sending in coins, taking a loan, performing

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1 a swap, accepting terms of use. All of
2 those things get a timestamp, so we can
3 kind of connect those to the session.

4 Q. So it's essentially activity with
5 the Celsius application that's constituting
6 use of the application and thereby
7 acceptance of the terms of use?

8 MS. BRIER: Objection to form.

9 You can answer.

10 THE WITNESS: I mean, so, like,
11 I'm speaking a little bit outside of
12 my -- my understanding of the exact --
13 exactly what is happening at the
14 technology level. But roughly how I
15 understand it is that -- there are kind
16 of, like, purpose-built data tables for
17 different kinds of activity.

18 So there might be a swap data
19 table -- data table, you know, a
20 transfer data table, a login session
21 data table, a terms of use data table.

22 And you can think of, like, the
23 key linking all those actions to a
24 particular session is the time -- the
25 timestamp.

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1 So, for example, if you wanted to
2 work backwards, you could say a user
3 logged in at this time. Their sessions
4 started at this time and ended at this
5 time.

6 And during that time frame, I
7 want to join, you know, transactions
8 that happen in those other data tables,
9 and so I could see these are all of the
10 things that happened during that login
11 session including, for example,
12 acceptance of terms of use.

13 BY MR. CREWS:

14 Q. And is this tracked using
15 relational SQL database?

16 A. I believe so. That's right.

17 Q. So would acceptance of terms of
18 use be an event -- like, would it be
19 tracked in an event table essentially?

20 A. I think so, yep.

21 Q. So would that mean -- let me
22 strike that.

23 Does a database have an explicit
24 database entry or table for accepting terms
25 of use specifically?

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1 A. Yes. If it didn't -- yeah,
2 that's, like, how we report on.

3 Q. So would this table then track
4 specific versions of terms of use
5 associated with a specific user that's
6 accepted those terms?

7 A. Yes.

8 Q. And would it be possible to
9 furnish each user's acceptance to each term
10 of use?

11 A. It should --

12 MS. BRIER: Objection to form.

13 You can answer.

14 THE WITNESS: Yeah. I mean, that
15 should be -- that should be possible.

16 Without having looked at the
17 underlying data -- I think I
18 responded -- there was a question about
19 this in one of the previous sessions.

20 I looked at -- for the purposes
21 of my declaration, I looked at the
22 aggregated view. But, you know, my
23 understanding is that the aggregated
24 view was built off of the raw
25 underlying data, which would have had,

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1 you know, user and terms of use
2 accepted and the date and timestamp.

3 BY MR. CREWS:

4 Q. And you had mentioned that -- I
5 don't want to mischaracterize you, but I
6 think you mentioned that consistent
7 throughout the terms of use, the title was
8 transferring to Celsius; is that a correct
9 characterization?

10 A. Yeah, and I want to emphasize
11 that different terminology might have been
12 used, but the -- kind of the -- the
13 outcome -- my interpretation of the outcome
14 is that customers were giving control over
15 their assets or giving their assets to the
16 company in exchange for yield.

17 Q. And there was a document
18 referenced today, 393, which contains
19 different versions.

20 If you could turn to page 337,
21 the ownership of digital assets. I believe
22 this is the change introduced in July of
23 2021.

24 A. Sorry. Yeah. Could you say the
25 page number again?

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1 Q. Yeah. It's page 337 of
2 Document 393.

3 THE WITNESS: Yeah, I got it.

4 MR. COLODNY: What exhibit is
5 that?

6 MS. BRIER: For purposes of the
7 record, I believe this is Exhibit 8.

8 THE WITNESS: Yep.

9 MS. BRIER: Are we all on the
10 same page? Is that your understanding
11 too, Mr. Crews?

12 MR. CREWS: On the cover, it's
13 saying Exhibit A-5 to A-6.

14 MS. BRIER: Oh, I see. Okay. So
15 it's Docket No. 393, and for the
16 purposes of this deposition, it was
17 Exhibit 8.

18 THE WITNESS: Yep.

19 MS. BRIER: Okay.

20 THE WITNESS: Sorry. What was
21 the question again?

22 BY MR. CREWS:

23 Q. Yeah. Just turning towards the
24 Clause 8, ownership of digital assets,
25 there were some changes made here where it

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1 changed from, "You hereby represent and
2 warrant to us at all times during which you
3 hold assets in your Celsius wallet that any
4 digital asset used by you in connection
5 with your Celsius wallet is owned by you or
6 that you are validly authorized to carry
7 out transactions using such digital assets
8 and that all the transactions initiated
9 with your Celsius wallet for your own
10 Celsius wallet," roughly -- essentially,
11 it's referring to your Celsius wallet.

12 And the key phrase, I think, I
13 want to draw your attention to is "at all
14 times during which you hold digital
15 assets."

16 Do you think that language could
17 potentially lead a customer reviewing these
18 terms of service, which were in effect
19 roughly the time prior to your signing up,
20 could that lead a customer to think that
21 they are retaining control over their
22 assets?

23 MS. BRIER: Objection to form.

24 Outside the scope.

25 You can answer.

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1 THE WITNESS: Yeah, sorry. Just
2 re-reading this. There's a lot of
3 markups in this paragraph.

4 BY MR. CREWS:

5 Q. Yeah, the red strikethrough was
6 prior to July of 2021.

7 A. Uh-huh.

8 (Pause for reading/reviewing.)

9 A. Yeah, so I see the point that
10 you're making. I mean, the -- I can tell
11 you this -- this general -- you know, this
12 section was one of the sections that I
13 referred to in my role as chief compliance
14 officer.

15 In terms of -- of -- so, in other
16 words, I looked at this as clarifying that
17 the customer was the owner of the assets
18 prior to sending them in.

19 And that was very important to me
20 from a compliance perspective, because I
21 needed to make sure that they were not
22 sending it in on behalf of another person
23 that was not known.

24 Because I -- you know, I had an
25 obligation to make sure that we knew who

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1 the customer was and who was the -- who the
2 owner of the coin was before it got to us.

3 But, yeah, so -- so that's how I
4 looked at this, was that this was mostly
5 about -- or that statement about -- the
6 statements that make it -- that are talking
7 about the customer owning the asset and,
8 like, the stuff at the end and not on
9 behalf of any other person or entity, that
10 was very important to me from the
11 compliance, AML, sanctions perspective.

12 And that's how I interpreted
13 this. But, you know, I can -- I can
14 understand your other reading of this.

15 Q. Yeah. And the first
16 strikethrough, I just want to draw
17 attention to that again. "At all times
18 during which you hold digital assets in
19 your Celsius wallet," so we've talked
20 already about how once you transfer control
21 of the crypto asset, it essentially becomes
22 under the control of whoever controls that
23 wallet.

24 A. Uh-huh.

25 Q. So if the control of the asset is

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1 delivered to Celsius and Celsius is
2 claiming title, in what sense would you say
3 the customer is holding digital assets in
4 their wallet?

5 MS. BRIER: Object to form.

6 THE WITNESS: So from what I
7 remember, in the terms of use, I think
8 that we talked about this being, like,
9 a loan to the company that was
10 callable, so customers could basically
11 say, hey, I want my money back.

12 And, you know, we reserved some
13 rights around the time frame upon which
14 we would allow people to withdraw, and
15 I think, you know, there were some --
16 you know, some things that turned out
17 to not be corner cases, but corner
18 cases that we laid out, you know, to
19 reserve some rights.

20 But I think -- I think, like,
21 in -- the way I take this was that the
22 company was trying to be clear about
23 what was going on, that customers were
24 giving us their assets for us to go out
25 and earn yield.

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1 And that this was really -- this
2 is really talking about the fact that
3 when customers want to get their coins
4 back -- want to get -- yeah, get their
5 coins back, they would be able to do
6 that by essentially calling the loan.

7 That's my reading into it as a -- as
8 not an attorney, more as a customer.

9 BY MR. CREWS:

10 Q. And this clause, though, doesn't
11 mention loans, does it?

12 A. No, I don't see that in here. I
13 mean, that's come up multiple times today,
14 and I think was in this -- was in this
15 version -- yeah, it's a few pages back that
16 I see a couple mentions of loan, but in
17 this section, "loan" isn't in there.

18 Q. Do you think that the mention of
19 loans would be appropriate when discussing
20 ownership of digital assets?

21 MS. BRIER: Objection to form.

22 THE WITNESS: Yeah. I think, you
23 know, probably some of my commentary on
24 this is at a place -- I wasn't the
25 person writing this. I'm not an

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1 attorney. I don't -- so, you know --
2 yeah, from my perspective, the -- as a
3 customer, it was pretty clear.

4 As an employee, when I reviewed
5 the terms, they, to me, were pretty
6 clear. But I understand that there
7 might be alternate readings of it.

8 BY MR. CREWS:

9 Q. And do you think it's important
10 that Celsius marketing be consistent with
11 the terms of service?

12 MS. BRIER: Objection to form.

13 THE WITNESS: I think that's a
14 good guideline for any company.

15 BY MR. CREWS:

16 Q. And do you think that Celsius's
17 marketing was consistent with the terms of
18 service?

19 MS. BRIER: Same objection.

20 THE WITNESS: I don't have, like,
21 a broad enough -- I don't have the --
22 it wasn't really in my -- in my scope
23 of responsibilities to be, like, up to
24 date on all of the marketing.

25 But, yeah, just to your previous

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1 point, it would -- that is -- that is a
2 good best practice, to make sure that
3 the marketing is in line with the terms
4 of service or terms of use.

5 And I don't know. I can't speak
6 to whether every piece of marketing
7 from the company was in line with the
8 terms of -- terms of use.

9 BY MR. CREWS:

10 Q. And do you think, say, like a
11 size 24-point font on the company's front
12 page, if that's inconsistent with a size,
13 you know, 10 font in the terms of use, does
14 that pose a problem?

15 MS. BRIER: Objection to form.

16 Outside the scope.

17 You can answer.

18 THE WITNESS: Yeah, if -- I mean,
19 I guess it depends on what -- on what's
20 in that -- what the statement is.

21 BY MR. CREWS:

22 Q. Okay. I'm just going to do a
23 quick screen share.

24 THE VIDEOGRAPHER: Do you need
25 this also filmed?

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1 MR. COLODNY: Do you need this
2 filmed?

3 MR. CREWS: That would be great,
4 if you could.

5 THE VIDEOGRAPHER: Can we go off
6 the record for just a moment?

7 MS. BRIER: Sure.

8 THE VIDEOGRAPHER: All right.

9 The time is currently 4:29 p.m. We are
10 going off the record for Media Unit
11 No. 3 of today's testimony.

12 (Whereupon, a recess was taken at
13 4:29 p.m.)

14 THE VIDEOGRAPHER: All right.

15 The time is currently 4:35 p.m. We are
16 back on the record for the Media Unit
17 No. 3 of today's testimony. Thank you.

18 BY MR. CREWS:

19 Q. So we were just pulling up this
20 exhibit, which is filed under 914,
21 Exhibit E. And this is a screenshot from
22 May 8, 2022, where it says, "Access your
23 coins whenever. Keep them safe forever."
24 And this bolding was mine.

25 ///

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1 (Whereupon, Exhibit 9 was marked
2 for identification.)

3 MS. BRIER: Oren, do you have a
4 copy of it?

5 THE WITNESS: No, I don't. But I
6 can see it clearly, somewhat.

7 BY MR. CREWS:

8 Q. Do you think this
9 characterization is consistent with the
10 notion of loaning your assets to Celsius?

11 MS. BRIER: Objection to form.

12 Outside the scope.

13 You can answer.

14 THE WITNESS: I can imagine,
15 like, the complexity of trying to talk
16 to customers about the -- the assets
17 that they had sent into the platform,
18 like, you know, in a concise way where
19 the challenge of trying to talk to
20 systems about the -- the assets that
21 they had sent in to the company in a
22 concise way for marketing purposes.

23 So, I mean, when I look at
24 statements like this, I think, you
25 know, if you try to use the exactly --

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1 if you try to use the correct
2 terminology, that would have been,
3 like, a 30-word sentence.

4 And I can understand how
5 marketing -- someone in marketing who
6 might not have been aware of -- been
7 aware of the terms of use or been aware
8 of the implications of using that
9 terminology might have said, like, you
10 know, let's talk about it like this.

11 BY MR. CREWS:

12 Q. In terms of people making use of
13 Celsius' services, do you think their
14 informed consent is important?

15 MS. BRIER: Object to form.

16 THE WITNESS: Is their informed
17 consent important?

18 Yeah, I mean -- yeah, I think
19 informed consent is important.

20 BY MR. CREWS:

21 Q. And you mentioned earlier today
22 that typical Celsius customers aren't
23 crypto newbies. That they'll have accounts
24 elsewhere.

25 Do you think that they could have

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1 been approached with more descriptive
2 language to explain how their assets were
3 being used?

4 MS. BRIER: Objection to form.

5 Outside the scope. Incomplete
6 hypothetical.

7 You can answer.

8 THE WITNESS: Sorry. Let me just
9 kind of process that.

10 Could they have been -- your
11 question was, could they have been
12 approached with more descriptive
13 language of how their coins were being
14 used?

15 BY MR. CREWS:

16 Q. Yeah.

17 MS. BRIER: Same objections.

18 THE WITNESS: Yeah, yeah. They
19 could have been. Yes.

20 BY MR. CREWS:

21 Q. Great. Let's see.

22 Were you involved with
23 preparation of the SOFA report,
24 Document 973?

25 MS. BRIER: Objection. Outside

299

1 the scope.

2 THE WITNESS: I don't know what
3 that document is. I mean, I was -- I
4 did review a lot of the documents for
5 the SOFA filings, but I don't know
6 which one that particular is.

7 BY MR. CREWS:

8 Q. Oh, it's the statement of
9 financial affairs itself.

10 A. I thought that was, like, a
11 sub -- a document -- yeah, I'm generally --
12 yeah, I mean, I've reviewed those
13 documents. It's a lot.

14 Q. And were you involved in the
15 preparation of the document?

16 MS. BRIER: Objection. Outside
17 the scope.

18 THE WITNESS: I don't think I was
19 a primary -- I mean, as a -- I think
20 there was a component of that that was
21 specific to insiders. There was
22 also -- I can't remember if that's
23 where there was the record of, like,
24 every transaction.

25 But I helped to do the definition

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1 of the -- the different types of
2 transactions that appeared.

3 So, yeah, I mean, I was involved
4 in them, but I wouldn't say that I was
5 a primary participant.

6 BY MR. CREWS:

7 Q. Do you know who the primary
8 participants were for preparing that
9 document?

10 MS. BRIER: Objection. Outside
11 the scope.

12 THE WITNESS: Yeah, I mean, it
13 was a huge -- it was a very large
14 effort in the company. Yeah, but I --
15 again, that -- that wasn't --
16 neither -- that wasn't, like, on my --
17 I would say, like, compliance was not,
18 like, a major -- you know, we weren't
19 gathering information that was
20 compliance-related. We weren't
21 gathering information that was related
22 to innovation. We weren't gathering
23 information related to, you know,
24 product development.

25 So -- and those are -- those are

301

1 my areas of focus, so I wasn't -- yeah,
2 I'm not sure exactly who was involved.

3 BY MR. CREWS:

4 Q. And the SOFA document is missing
5 the claim number that's in the balance
6 document, the 974 document.

7 Do you know there's a reason why
8 that might be missing?

9 MS. BRIER: Objection to form.

10 Outside the scope. Foundation.

11 THE WITNESS: Yeah, I don't know.
12 I'm not familiar enough with these
13 documents to -- yeah, I'm not familiar
14 enough with it. I could get familiar
15 with it by reviewing them. I wasn't --

16 BY MR. CREWS:

17 Q. The reason I mention it is
18 because the claim number serves as a prime
19 identifier on the balance transfer document
20 or the balances document.

21 But there's no primary identifier
22 on the SOFA report. So if somebody has --
23 there are multiple people with the same
24 name, you can't tell which person is doing
25 those transactions.

302

1 A. I see.

2 Q. So would you acknowledge that as
3 a deficiency in that document?

4 MS. BRIER: Objection to form.

5 Outside the scope.

6 Mr. Blonstein, just testified
7 he's never -- he wasn't involved and
8 doesn't have a foundation to testify
9 about this.

10 THE WITNESS: Yeah, I don't -- I
11 don't have enough -- I don't have
12 enough information about it. You
13 know...

14 BY MR. CREWS:

15 Q. Okay. We can move on.

16 Are you familiar with USDC, the
17 token?

18 A. Yes.

19 Q. And could you just explain for
20 everybody what that token is?

21 A. It's a stable coin issued by
22 Circle. It's pegged to the dollar.

23 Q. Yeah. And you mentioned earlier
24 today that it would be a challenge to do
25 network tracing on Ethereum; is that

303

1 correct?

2 MS. BRIER: Objection. Outside
3 the scope.

4 You can answer.

5 THE WITNESS: The -- so what I
6 was saying is that it's difficult to
7 trace the exact coin -- the exact coin
8 that a person -- an ERC-20 that a
9 person deposited into our platform as
10 it moved throughout the platform in
11 terms of -- you know, we treated them
12 as fungible once they came into the
13 platform.

14 BY MR. CREWS:

15 Q. Makes sense.

16 So in the UTXO, you're seeing the
17 flow from wallet to wallet?

18 A. Exactly, yeah.

19 Q. Have you taken any steps as a
20 company to make sure that customer deposits
21 are going towards earning rewards for them?

22 MS. BRIER: Objection to form.

23 And objection to scope, but you can
24 answer.

25 THE WITNESS: Sorry. Just

304

1 repeating...

2 So we maintain a record of coins
3 that our customers send to us on that
4 ledger, and then there's the coin
5 movements.

6 You know, and -- almost
7 regardless of what actually was going
8 on with those tokens that they sent in,
9 we were calculating based on the reward
10 rate what -- what rewards were owed to
11 them on the ledger.

12 So kind of regardless of, like,
13 where their coin was or if -- if a
14 particular coin that was sent -- that
15 was sent in was actually loaned out or
16 deployed on DeFi, that didn't really
17 matter, because how we calculated the
18 rate was -- or the rate that we set was
19 used by the software that calculated
20 the obligation to the customer on the
21 ledger.

22 BY MR. CREWS:

23 Q. Yeah. So a customer such as
24 myself, we could see the obligation that
25 we're owed, but in order for the reward to

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1 be useful, Celsius would presumably have to
2 be actually using our deposit to actually
3 earn something?

4 MS. BRIER: Objection to form.

5 Outside the scope.

6 THE WITNESS: No, no. I mean,
7 it's the -- it's -- I was gonna make
8 the point -- if I understood you
9 correctly, making kind of the opposite
10 point is that it doesn't -- you know,
11 those coins could have sat there and
12 not been deployed at all and we may
13 have not generated any yield.

14 But we would have calculated --
15 you know, the -- their interest rate
16 would have been -- there -- an interest
17 rate would have been set or rewards
18 rate would have been set and the ledger
19 would be calculating what is owed to
20 you based on that rate.

21 So it was kind of -- you know, it
22 was -- the activity of the coins was
23 separate from the rewards that were
24 paid out.

25 BY MR. CREWS:

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1 Q. So was the reward paid out
2 calibrated to the deployment activities?

3 MS. BRIER: Objection to form.

4 Outside the scope.

5 THE WITNESS: Yeah. So I
6 should -- I mean, I was not involved in
7 setting rates. I was not involved in
8 the payouts. I was not involved in the
9 ledger. I was not involved in -- you
10 know, like, almost all of those things.

11 And obviously, you know, kind of
12 the proof is in the pudding, right?

13 And the output is that obviously the
14 deployment activities were not
15 sufficient for the rates that were --
16 the rates that were advertised.

17 BY MR. CREWS:

18 Q. So would you say that assertions
19 that 8 percent of revenues go towards
20 paying rewards would be inaccurate?

21 MS. BRIER: Objection to form.

22 Outside the scope.

23 THE WITNESS: Yes.

24 BY MR. CREWS:

25 Q. And can you provide any

307

1 assurances that deposits that customers
2 made did not go towards paying out
3 departing customers?

4 MS. BRIER: Objection to form.

5 Outside the scope.

6 THE WITNESS: No, I can't.

7 BY MR. CREWS:

8 Q. I want to do a screen share. And
9 this is the exhibit I emailed the court
10 reporter. Sorry, not my email box. One
11 second.

12 So this was prepared looking at
13 the SOFA report in combination with the 974
14 document of balances. And what's depicted
15 here from the left is a customer -- a
16 corporate customer based in Australia, who
17 deposited 131,000 USDC into their Celsius
18 account on 8:28 a.m., the date of the pause
19 on June 12.

20 Now, this specific entry in the
21 SOFA report is on page 5448. And it was
22 used -- essentially a query -- pull the
23 transaction from the blockchain to show
24 that this was funded from their Binance
25 account.

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1 So at 8:28, \$131,000 flowed from
2 this customer's Binance account into their
3 personalized deposit address at Celsius.
4 Five minutes later those funds went into
5 Celsius's wallet No. 5.

6 There were nine transfers
7 throughout the day into a Celsius
8 frictional wallet, as you've referred to
9 it, and I believe you said it is a Celsius
10 terminology.

11 There was one particular
12 transfer, 8:41 a.m., in the amount of
13 \$789,000 USDC, and there were a total of
14 7 million transfers and nine different
15 transactions that day, which were in the
16 table below.

17 Later that day, there were
18 withdrawals made by two separate customers,
19 refer to this as customer B and customer C,
20 at 5:19 p.m. \$99,000 were withdrawn to
21 this person's personal deposit address at
22 FTX, and it was then transferred internally
23 to their comingle address.

24 Another customer at 5:04 p.m.
25 withdrew \$36,000 into their Coinbase

309

1 personalized deposit address and another
2 \$100,000 just later.

3 Assuming that this exhibit is
4 accurate, would it be plausible for
5 customers B and C to the right to think
6 that their -- or, sorry, for customer A to
7 think that customers B and C were receiving
8 their USDC?

9 MS. BRIER: And, Mr. Blonstein,
10 before you answer, Mr. Crews, can you
11 provide some additional context for
12 this document?

13 And who created this?

14 MR. CREWS: I created it.

15 MS. BRIER: Where did it come
16 from?

17 MR. CREWS: Yeah.

18 MS. BRIER: And what is it based
19 on?

20 MR. CREWS: It's based upon the
21 SOFA report which is 973 document, the
22 balance transfer document, 974, and
23 blockchain analysis that I've
24 conducted.

25 MS. BRIER: So, Mr. Blonstein --

310

1 objection to foundation and outside the
2 scope.

3 And, Mr. Blonstein, to the extent
4 that you can verify and know the
5 information that he's asking you about,
6 you can answer in that context and that
7 context only.

8 BY MR. CREWS:

9 Q. Perhaps first we can start, would
10 the flow of funds from a personalized
11 deposit address into Celsius's wallet
12 No. 5, into a frictional wallet, is that
13 consistent with your understanding of how
14 transfers work with Celsius?

15 MS. BRIER: Objection to form.

16 And outside the scope.

17 THE WITNESS: Should I -- okay to
18 answer, or...

19 MS. BRIER: That question you can
20 answer. To the extent he's asking you
21 questions about this chart, I would
22 answer if you know and understand that
23 what's there is true, and only if you
24 know what's there is true.

25 THE WITNESS: I think some of

311

1 this is in line with my declaration on
2 the custody -- my concern -- my custody
3 declaration and the flow of coins
4 between wallets.

5 So the personalized deposit
6 address in the declaration, we call
7 those the bridge -- bridge wallets, and
8 those were periodically swept to a main
9 wallet, which maybe you're calling
10 wallet No. 5.

11 And then that is true that
12 periodically assets were moved from the
13 main wallet into frictional. Also
14 true.

15 I mean, you know, my
16 understanding is that, like, because
17 this is a pooled account -- a pooled
18 wallet, it's not -- I don't think it's
19 like a -- it's not necessarily a good
20 conclusion to make that if you're
21 saying that the customer on the
22 right -- the customers on the right
23 were -- that's what I think your
24 question was.

25 Should the customers on the

312

1 right -- or should the customer on the
2 left think that the customers on the
3 right were withdrawing his coins -- his
4 or her coins, is that -- that was
5 your...

6 BY MR. CREWS:

7 Q. Yeah. Essentially, I think I'd
8 agree with you that when it comes to --
9 it's essentially similar to once you have
10 commingled funds in an account, you can't
11 specifically say that, you know -- like,
12 it's basically if you're pulled over by a
13 cop and you say, I pay your salary. You
14 can't really say that, although maybe it's
15 true in a sense.

16 A. Uh-huh.

17 Q. But I suppose it was -- do you
18 think that -- put it this way, is there any
19 measure that Celsius has taken to prevent
20 commingling such that customer A wouldn't
21 think that their funds are just going to
22 pay out departing customers?

23 MS. BRIER: Objection to form.

24 This is far outside the scope of the
25 terms of use issues that we're here to

313

1 discuss today.

2 You can answer, if you know.

3 THE WITNESS: Yeah, I mean,
4 it's -- yeah, it's pretty far outside
5 of what I worked on. You're asking
6 about what measures were in place to --
7 you know, because of the -- what
8 measures were in place to potentially
9 prevent something like that from
10 happening.

11 Funds were commingled. Coins
12 were commingled. So it's very hard to
13 make that conclusion.

14 Like, you know, you're not -- in
15 this diagram, you're not necessarily
16 reflecting that other withdrawals might
17 have been made at this time to --
18 sorry, not withdrawals -- deployments
19 may have been made from wallet No. 5
20 to, you know, institutions that were
21 borrowing or to DeFi.

22 You know, other customers may
23 have deposited -- the same customers,
24 for instance, that you're showing on
25 the right may have also deposited.

314

1 So there's a lot of other -- so
2 there's a lot of other possibilities.

3 And I think, you know, the --
4 this is why generally a lot of the CeFi
5 crypto industry, the centralized crypto
6 industry has defaulted to this kind of
7 setup is that operationally this is
8 simpler to manage. You're not trying
9 to have to track individual user coins
10 and -- you know -- you know, the
11 simplicity of having a pool of assets.

12 But, yeah -- so, I mean, that's
13 my answer.

14 BY MR. CREWS:

15 Q. I'd like to move on to questions
16 regarding the API agreement with partners.

17 Are you aware that Vermont issued
18 a cease and desist letter, Docket
19 No. 22-021-S?

20 MS. BRIER: Objection to form.

21 Outside the scope.

22 THE WITNESS: I mean, I was aware
23 that there were many -- many states
24 were sending us -- yeah, we were --
25 yes. I mean, I don't know -- actually

315

1 know of that specific document, but I
2 do remember Vermont had sent us -- had
3 sent us something.

4 BY MR. CREWS:

5 Q. I have this excerpt from
6 Vermont's letter that I'd like you to read,
7 Sections 27 through 28. And then 29 as
8 well. I could read aloud. It's about the
9 Celsius API partner program. 27 says --

10 MS. BRIER: Can you read this,
11 Oren?

12 THE WITNESS: I can't read what's
13 on the screen.

14 MR. CREWS: I can make it bigger.

15 MS. BRIER: And, Mr. Crews, can
16 you give us more detail on what you're
17 showing? I can't read it myself.

18 MR. CREWS: Yeah. This is
19 describing the Celsius API partner
20 program in the letter that Vermont
21 sent.

22 MS. BRIER: What page are you on,
23 for the record?

24 MR. CREWS: It's on page 6 of the
25 document.

316

1 MS. BRIER: Okay. I'd object to
2 the document as outside the scope.

3 You can continue with your
4 questioning, but I just want to make
5 sure Mr. Blonstein could read it.

6 BY MR. CREWS:

7 Q. Sure. It's essentially setting
8 the foundation for what the API partner
9 program was.

10 A. Was that a question for me,
11 sorry?

12 Q. No. That's my statement. And
13 I'm wondering if you would agree that this
14 is a fair characterization of the API
15 partner program.

16 MS. BRIER: Objection to form.
17 Outside the scope.

18 It's showing an incomplete
19 document.

20 Can you see it?

21 (Whereupon, Exhibit 10 was marked
22 for identification.)

23 THE WITNESS: Could you click on
24 the plus icon one more time?

25 ///

317

1 BY MR. CREWS:

2 Q. Yeah, yeah.

3 A. Thanks.

4 (Pause for reading/reviewing.)

5 A. Okay. Yeah, I read it. I mean,
6 yeah.

7 Just, like -- like, was
8 mentioned, you know, I'm only seeing a
9 portion of the document. It's not
10 something I'm, like, super familiar with.
11 But I can read what's on the screen.

12 Q. And would you agree with the
13 characterization in this last sentence
14 that, "Apart from the difference in how the
15 Celsius earn account is accessed,
16 individual retail customers of API partners
17 offering the segmented account option are
18 subject to the same rights, benefits, terms
19 and conditions as Celsius' own Celsius earn
20 account investors."

21 MS. BRIER: Objection to form.

22 Outside the scope. Lack of foundation.

23 THE WITNESS: Yeah. Just as a
24 statement, like, I was not on the
25 partnership's team. The -- I don't

318

1 think a single partnerships
2 relationship was -- was -- was set up
3 from the time that I became the CCO.

4 So, like, any discussions with
5 the partners, any of the, like, details
6 about how that integration worked, all
7 that stuff would have been worked out
8 before I was the CCO.

9 So if I was the CCO during the
10 time when one of those partnerships was
11 being integrated or implemented,
12 there's a higher chance that I would
13 have been familiar with the details of
14 it.

15 But stuff that was done
16 historically, I primarily cared about,
17 you know, do we know who those
18 customers -- are we fulfilling our --
19 our obligations under the Bank Secrecy
20 Act and sanctions laws just to make
21 sure that we -- you know, either we
22 under -- you know, we've -- we're
23 relying on the representations of that
24 partner, that they're performing KYC
25 and sanction screening, or we are doing

319

1 that review of their customers
2 directly.

3 But, yeah, so, like, the details
4 of this, that sounds right, but I also
5 was not -- I was not involved in
6 that -- in setting these up.

7 BY MR. CREWS:

8 Q. Do you know who was involved in
9 setting them up?

10 MS. BRIER: Objection to form.

11 Outside the scope.

12 THE WITNESS: So we had a
13 partnerships team, and any -- any kind
14 of contract -- anything that had
15 regulatory implications would have gone
16 through our legal team and our
17 regulatory team. So partnerships would
18 have brought that to those two teams.

19 BY MR. CREWS:

20 Q. And the mention here of the API
21 partner customers being offered the same
22 rights and benefits, would that also
23 include notice of terms of service changes?

24 MS. BRIER: Objection to form.

25 Outside the scope. And lack of

320

1 foundation. And incomplete reference
2 to the sentence, but you can answer.

3 THE WITNESS: Yeah, just in
4 preparation for the declaration, this
5 was one of the topics that we confirmed
6 that -- sorry, that I confirmed that,
7 you know, just given also that a lot of
8 this -- a lot of -- you know, this
9 declaration and the research that was
10 done, the people on the partnerships, I
11 think that entire team is gone.

12 So to the extent that we were
13 able to verify it, our understanding --
14 my understanding is that in every case
15 of the terms of service or terms of use
16 changing, the person on the
17 partnerships team that managed that
18 relationship notified the partner and
19 made sure that either through the API
20 or through some other method, their
21 customers were made aware of the
22 change.

23 BY MR. CREWS:

24 Q. And in Document 1406, page 8,
25 there was a response consistent with that

321

1 in the third paragraph of that document.

2 I'll give you a moment to pull it open.

3 A. Sorry. You said 1406?

4 MS. BRIER: Yeah. Which document
5 are you talking about?

6 MR. CREWS: Document 1406.

7 MS. BRIER: Got it. Thanks.

8 Exhibit 6. Thanks.

9 THE WITNESS: Sorry. And you
10 said what page?

11 BY MR. CREWS:

12 Q. Page 8 and specifically the third
13 paragraph of the response to question 4.
14 It's essentially what you're saying, that
15 Celsius -- agreements with partners
16 required them to have their customers
17 accept the terms.

18 A. Yep.

19 Q. I'm wondering if you could talk a
20 bit more about what Celsius did to verify
21 that the partners followed through with
22 these agreements.

23 MS. BRIER: Objection to form.

24 THE WITNESS: Yeah.

25 Unfortunately, I don't have -- I don't

322

1 have that -- those details. Yeah, I
2 don't have those details.

3 BY MR. CREWS:

4 Q. Is there a way for us to find out
5 those details at a later point?

6 A. We'd have to talk -- we'd have to
7 try to find -- yeah, maybe -- it would be
8 with our -- either legal or regulatory team
9 to see if we have that information.

10 Q. Okay. And then one last
11 question.

12 The response here mentions that
13 for terms of use Version 6, Celsius was
14 working with its API partners.

15 There's no mention of Version 8.
16 Do you know if that was also treated
17 similarly?

18 A. So I can say that generally in
19 a -- I don't know every single API partner
20 off the top of my head, but generally, the
21 API partners tended to be outside of the
22 U.S.

23 And Version 8 only was relevant
24 for U.S.-based customers, because this was
25 the release of the custody product and

323

1 those -- those other changes. So beyond
2 that, yeah, that's the extent of my
3 knowledge on that.

4 Q. So just to make sure I'm
5 understanding you correctly, are you saying
6 that the creation of custody then wouldn't
7 affect international users?

8 A. Yeah, that's correct. Custody
9 accounts were only available to U.S.
10 customers.

11 Q. And to the extent that there's a
12 shortfall of ability to fund withdrawals,
13 could international accountholders be
14 disadvantaged by not having had access to
15 custody?

16 MS. BRIER: Objection to form.

17 Outside the scope.

18 THE WITNESS: Disadvantaged by
19 not having...

20 Yeah, I don't know the -- yeah, I
21 don't know -- I don't know how to
22 answer that question, yeah.

23 MR. CREWS: That's it for me.
24 Thank you.

25 MS. BRIER: And before we move on

324

1 to the next pro se creditor, could we
2 please get a time check on the record.

3 THE VIDEOGRAPHER: The time is
4 currently 5 hours and 26 minutes.

5 MS. BRIER: Okay. So we've got a
6 little over an hour and a half, folks,
7 left. If you want to figure out how to
8 divide up that time.

9 And whoever the next pro se
10 creditor up is.

11 THE STENOGRAPHER: Can we go off
12 the record real quick?

13 MS. BRIER: Yeah. We'll go off
14 the record right now.

15 (Comments made while videographer
16 attempted to go off Zoom.)

17 THE VIDEOGRAPHER: So the time is
18 currently 5:06 p.m. This concludes
19 Media Unit No. 3 of today's testimony,
20 and we are off the record.

21 (Whereupon, a recess was taken at
22 5:06 p.m.)

23 THE VIDEOGRAPHER: All right.
24 The time is currently 5:26 p.m. This
25 is Media Unit No. 4 of today's

325

1 testimony, and we are back on the
2 record.

EXAMINATION

4 BY MR. HERMANN:

5 Q. Great. Hello. This is Immanuel
6 Hermann, pro se creditor, and my first
7 question is related to post-pause and
8 post-petition transfers.

9 Were some users allowed to
10 transfer funds from earn to custody after
11 the pause?

12 MS. BRIER: Objection to form.

13 Outside the scope. Foundation.

14 You can answer.

21 BY MR. HERMANN:

22 Q. Were any digital assets
23 transferred from earn to custody after the
24 pause by Celsius without request from
25 customers?

326

1 MS. BRIER: Objection to form.

2 Outside the scope.

3 You can answer.

4 THE WITNESS: Not to my
5 knowledge.

6 BY MR. HERMANN:

7 Q. Were any digital assets returned
8 to customers post-pause?

9 MS. BRIER: Objection to form.

10 Outside the scope.

11 THE WITNESS: Not to my
12 knowledge.

13 BY MR. HERMANN:

14 Q. Did Celsius settle with any
15 customers after the pause but prepetition?

16 MS. BRIER: Objection to form.

17 Outside the scope.

18 THE WITNESS: Not to my
19 knowledge.

20 BY MR. HERMANN:

21 Q. All right. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 MS. BRIER: Objection to form.

25 Far outside the scope.

327

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 MS. BRIER: Objection to form.
11 This is far outside the scope.
12 But you can answer.
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

328

1 BY MR. HERMANN:

2 Q. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 MS. BRIER: Objection to form.

20 THE WITNESS: Sorry.

21 BY MR. HERMANN:

22 Q. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

329

1 MS. BRIER: Objection to form.

2 Outside the scope.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 BY MR. HERMANN:

10 Q. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 MS. BRIER: Objection to form.

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 BY MR. HERMANN:

21 Q. Great. Thank you.

22 So I have some questions now

23 about loans, but they are related to earn,

24 and then -- and then I'll ask you to turn

25 to some documents.

330

1 I want to start with a question
2 about what happens to title when somebody
3 takes out a loan.

4 When a user who had coins in earn
5 takes out a loan, what exactly happens --
6 let me rephrase the question.

7 When a user who has coins in earn
8 takes out a loan, what exactly happens to
9 the coins on the blockchain? Let's start
10 with that.

11 MS. BRIER: Objection. Outside
12 the scope.

13 BY MR. HERMANN:

14 Q. The collateral -- let's say that
15 you had two Bitcoins in -- let me rephrase
16 again. My apologies.

17 Let's say that you had one
18 Bitcoin in earn and then you take out a
19 loan against that Bitcoin so that that
20 becomes collateral.

21 What happens on the blockchain to
22 that Bitcoin?

23 MS. BRIER: Objection. Outside
24 the scope. Object to form.

25 You can answer, Mr. Blonstein, if

331

1 you know.

2 THE WITNESS: So where the coins
3 were part of -- were enrolled in the
4 earn program or part of the earn
5 program, there wouldn't be any
6 different treatment of those coins on
7 the -- you know, there was not -- there
8 wasn't, like, some -- a blockchain
9 event that would take place when a
10 customer elected to take out a loan
11 from their assets -- or using the
12 assets that were enrolled in the earn
13 program.

14 And you asked the other question
15 about, you know -- and, actually, I
16 think that this was similar to a
17 question that was asked earlier.

18 The main -- the main thing that
19 would change would be the customer
20 would forego the rewards that they
21 would earn otherwise by having their
22 assets in the earn program.

23 BY MR. HERMANN:

24 Q. And what happens to the coins in
25 term of Celsius's internal recordkeeping?

332

1 It sounds like -- so you're saying -- just
2 to clarify before we move on to this next
3 question, nothing on Fireblock has changed,
4 the earn wallet -- there's no special
5 wallet for loans or anything like that,
6 nothing -- at least in realtime, nothing
7 happened to the blockchain.

8 MS. BRIER: Objection to form.

9 Outside the scope.

10 You can answer.

11 THE WITNESS: That's correct, to
12 my understanding.

13 BY MR. HERMANN:

14 Q. Okay. And then what happens to
15 the coins in terms of Celsius's internal
16 recordkeeping. So if somebody took a one
17 Bitcoin loan, it was earned, now it's
18 collateral, how is that marked internally?

19 MS. BRIER: Object to form.

20 Outside the scope.

21 THE WITNESS: Okay to answer?

22 MS. BRIER: You can answer.

23 THE WITNESS: Yeah. And this was
24 in some of the -- you know, the
25 hundreds of documents that were

333

1 submitted the last few months.

2 But, like, a -- you know, there's
3 a -- there would have been a
4 transaction entry for those assets
5 converting to collateral for a loan.

6 So there would have been a ledger
7 transaction.

8 And that was obviously -- that
9 was important for the ledger software
10 to be able to distinguish between
11 assets where we needed to pay the
12 customer yield based on those assets
13 being enrolled in earn versus when they
14 converted -- you know, when the
15 transaction took place to turn those
16 assets into collateral, we stopped
17 paying yield on those.

18 So we needed to -- there needed
19 to be a transaction in the ledger to
20 make sure that they were accounted for
21 properly.

22 BY MR. HERMANN:

23 Q. Okay. What do you believe
24 happens contractually when someone took out
25 a loan? Did the collateral move out of

334

1 earn contractually and into the loan
2 program?

3 MS. BRIER: Objection to form.

4 THE WITNESS: I mean, there's a
5 loan agreement that covered that. I
6 don't -- I'm not -- I'm not familiar
7 enough with it to tell you
8 contactually -- I mean, other than what
9 I've described, which is that, you
10 know, those assets -- the assets that
11 were in the earn program were
12 transferred to Celsius, and in -- when
13 a customer took a loan, those assets
14 were -- were then treated as
15 collateral.

16 Yeah, yeah, so just to go back to
17 my first answer on this, I'm not
18 familiar enough with the loan agreement
19 at this time. I need to refresh my
20 memory by reviewing that document if
21 you want a better answer.

22 BY MR. HERMANN:

23 Q. Okay. We'll do that in a moment.

24 When someone took out a loan -- I
25 guess I was going to ask if you think that

335

1 the collateral remains Celsius's property,
2 but maybe we should just get you opening up
3 the document here.

4 Can you turn to page 932. I
5 think it's Exhibit 8, the declaration of
6 Alex Mashinsky.

7 Actually, let's say page 933.
8 I'm going to ask you some questions, but if
9 you would like to go off the record to read
10 this through or something, we can do that.

11 MS. BRIER: So, Mr. Hermann, I
12 think, first, that I don't know that
13 Mr. Blonstein has that set of pages.
14 We had an excerpt of the terms of use,
15 and it's only the changes from
16 Version 5 to Version 6. So it stops at
17 page --

18 THE WITNESS: 395.

19 MS. BRIER: 390 -- yeah, I think
20 there might be one more page there --
21 397.

22 So he doesn't have pages 900 in
23 front of him, so he's looking at
24 something else.

25 MR. HERMANN: All right. Then

336

1 what I'm going to do is I'm going to
2 share my screen; however, you're
3 probably going to object saying it's
4 incomplete or something. Nevertheless,
5 I have some questions, and we can -- I
6 can ask them.

7 So let me just share my screen
8 really quick. We can go from there.

9 BY MR. HERMANN:

10 Q. All right. So here is -- this is
11 page 933, for the record, of the
12 declaration of Alex Mashinsky. And we are
13 on paragraph 2 of the section entitled
14 "Eligibility Application."

15 MS. BRIER: And, Mr. Blonstein --

16 BY MR. HERMANN:

17 Q. Can you see this, Mr. Blonstein?

18 A. Yeah, if you could, maybe,
19 increase the magnification a bit.

20 Yeah, that's better. Thank you.

21 Q. Yes, of course.

22 So my first question here is
23 about, a loan application is approved and
24 binding upon Celsius and you -- only after
25 Celsius has approved your loan application.

337

1 So, therefore, do you agree that
2 the assets remain -- let's say that the
3 collateral is in earn.

4 Do you agree that it remained in
5 the earn program until Celsius approved the
6 loan application?

7 MS. BRIER: Objection to form.

8 Outside the scope.

9 And for clarity of the record,
10 Mr. Hermann, are these highlights your
11 highlights?

12 MR. HERMANN: Yes.

13 MS. BRIER: Okay.

14 You can answer.

15 THE WITNESS: Yeah, I mean, based
16 on what I'm seeing on the page, I
17 agree.

18 BY MR. HERMANN:

19 Q. And then "Celsius shall have the
20 right to reject any loan application in its
21 sole discretion."

22 Do you agree that this means the
23 loan is only initiated after Celsius
24 approves the loan?

25 MS. BRIER: Object to form.

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1 THE WITNESS: Yeah. Again, based
2 on what's there and not having
3 refreshed my memory by re-reading these
4 documents recently, but, yeah, based on
5 what I see, agree.

6 BY MR. HERMANN:

7 Q. Thank you.

8 And now we're under the early
9 repayment section on page 935 of the
10 declaration of Alex Mashinsky, No. 6.
11 "Should you make a full early repayment of
12 your loan in accordance with the terms
13 hereof, Celsius shall release the
14 collateral to your Celsius accounts within
15 10 days of your full repayment. Upon
16 Celsius' release of the collateral, the
17 loan shall be immediately and automatically
18 terminated."

19 Does this paragraph, to you,
20 indicate that the collateral is treated
21 differently from a deposit in the earn
22 program?

23 MS. BRIER: Objection to form.

24 THE WITNESS: No -- yeah -- no.

25 I mean, I don't think I see any

339

1 reference to earn.

2 So, like, yeah, this doesn't --

3 your question is, like, does this
4 paragraph make it clear that there's a
5 difference between how earn is -- or
6 assets in earn or assets in collateral
7 are treated. I don't see that
8 delineated in that paragraph.

9 BY MR. HERMANN:

10 Q. Right. It's not delineated in
11 the paragraph that the assets are treated
12 differently. However, is it clear that the
13 collateral is collateral?

14 You're using the word
15 "collateral." And that it can be released
16 into the account upon repayment?

17 MS. BRIER: Objection to form.

18 THE WITNESS: It is clear --
19 yeah, I mean, based on, you know, what
20 that paragraph says, it is clear what
21 you said. I mean, it says that pretty
22 much verbatim.

23 BY MR. HERMANN:

24 Q. Would you agree that when
25 somebody takes out a loan, there's a

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1 bunch -- there's a transaction. There's a
2 transfer from earn to loan, so -- so it's a
3 transfer out of earn -- so if you transfer
4 one Bitcoin out of earn, you transfer it
5 into the loan program, it becomes
6 collateral?

7 MS. BRIER: Objection to form.

8 Outside the scope.

9 THE WITNESS: I agree, like,
10 the -- there -- we have, you know,
11 agreements in place that cover the
12 different relationship between the
13 customer and Celsius and their assets
14 based on the product that they're
15 using.

16 So there's an agreement that our
17 terms of use covers, you know, the
18 earn, the use of, you know, coins that
19 customers transfer to Celsius for earn
20 and there's, you know, similar language
21 for coins that are used for -- used as
22 collateral for the loans program.

23 BY MR. HERMANN:

24 Q. Great.

25 We're now on page 940 of the

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1 declaration of Alex Mashinsky. Under the
2 section "Borrower's Representations."

3 "You hereby represent and warrant
4 to us that, as of the loan effective date
5 and throughout the loan term: 1) You are
6 the sole owner of all digital assets used
7 in connection with the loan (including the
8 collateral and any margin call delivery)."

9 Do you agree that this is clear
10 and unambiguous that the person taking out
11 a loan is the sole owner of all digital
12 assets used in connection with the loan?

13 MS. BRIER: Objection to form.

14 This is outside the scope and calls for
15 legal conclusion.

16 You can answer.

17 THE WITNESS: Yeah, kind of
18 similar to the question that I was
19 answering right before this.

20 When I -- you know, at times
21 where I've reviewed this, my interest
22 in this -- like, I was glad to see this
23 to the extent that from -- in my
24 compliance in anti-money laundering and
25 sanctions, you know, role or capacity,

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1 that I could be sure that people that
2 were transferring assets into the
3 company were the owners of those assets
4 and that they weren't doing it on
5 behalf of someone else.

6 I -- I can understand your point.
7 I agree that it's -- it is maybe not
8 clear enough that -- like, my reading
9 of this is that the person is the sole
10 owner of it prior to them sending the
11 assets to Celsius, but I can -- I can
12 understand your reading of it.

13 BY MR. HERMANN:

14 Q. Okay. So are customers the sole
15 owner of the coins in their earn accounts?

16 When they sign this contract and
17 Celsius has not yet approved the loan;
18 therefore, the loan is uninitiated. You've
19 asked customers to sign a representation
20 that there's a sole owner of the coins, and
21 your previous testimony says that the coins
22 were in the earn account, and they remain
23 in the earn account while Celsius
24 considers -- so take someone who has
25 applied but not yet gotten approved for a

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1 one Bitcoin loan.

2 In this stage, their coins are in
3 earn. They've now signed a representation
4 that they're the sole owner of the coins.

5 Does Celsius have an ownership
6 interest in those coins?

7 MS. BRIER: Objection to form.

8 Outside the scope. Calls for a legal
9 conclusion and incomplete hypothetical.

10 THE WITNESS: Yeah. I mean, I
11 think that this gets to, you know,
12 interpretation of this -- you know,
13 from a legal -- a legal interpretation
14 of this. So I'm not the right person
15 to answer.

16 BY MR. HERMANN:

17 Q. All right. We're now on
18 number 3. "You represent and warrant that
19 all digital assets used in connection with
20 the loan are not owned, controlled,
21 received from, or are held on behalf of,
22 any individual or legal entity subject to
23 sanctions, embargoes, or trading
24 restrictions," blah, blah, blah.

25 I understand you are probably

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1 going to say this is AML stuff.

2 My related question to this is:

3 Do you take the position if Celsius owned
4 the assets, was Celsius, at this point,
5 subject to any sanctions, embargoes or
6 trading restrictions administered or
7 enforced by any national or international
8 government or organization?

9 MS. BRIER: Objection to form.

10 Outside the scope. Showing him an
11 incomplete section of a full document.

12 But you can answer.

13 THE WITNESS: I don't know what
14 the intent was in the crafting of this
15 agreement. I wasn't, you know, part of
16 the -- the -- I didn't draft it. I
17 didn't review or approve it.

18 And, you know, I think you asked
19 a question about, like, do I view this
20 as -- you know, of -- of Celsius having
21 to represent that we weren't subject to
22 sanctions? I didn't view it that way.

23 BY MR. HERMANN:

24 Q. All right. And then number 4,

25 "You are validly authorized to carry out

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1 transactions using such digital assets,
2 and..."

3 So, again, here in number 4 we're
4 seeing "you are validly authorized," and it
5 references the digital assets; it doesn't
6 reference a security, a loan, whatever we
7 call earn. It talks about the digital
8 assets themselves as the native thing.

9 And that it's not on behalf of
10 any person or entity. And, again,
11 remember, we're talking about -- you know,
12 let's, again, assume the situation is that
13 this is a pending loan application, so the
14 coins remain in earn.

15 You've asked the borrower to sign
16 a representation that they're validly
17 authorized to carry out the transactions
18 and not on behalf of any other person or
19 entity.

20 In your opinion, was the person
21 taking out the loan actually doing it on
22 behalf of Celsius, because they're
23 withdrawing -- if your position is that
24 they're withdrawing the collateral from
25 earn, then actually are they withdrawing it

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1 on behalf of Celsius and depositing --
2 depositing it into the loans program?

3 MS. BRIER: Objection to form.

4 There's a lot there.

5 If you understand it, you can
6 answer.

7 THE WITNESS: Yeah. I mean, I
8 think you're making the same kind of
9 point as the items above it.

10 So I understand the point that
11 you're making. I didn't formulate this
12 agreement, didn't approve it, didn't
13 review it. Wasn't involved in drafting
14 it. So I can't really comment on it.

15 BY MR. HERMANN:

16 Q. Okay. And then the last one is
17 number 5. "For the duration of the term,
18 all digital assets used in connection with
19 the loan..."

20 So I think this one speaks to
21 after the loan is approved, let's just say,
22 because it does say "for the duration of
23 the term," and the term only starts when
24 it's approved.

25 But it says, "free from any

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1 claims, indebtedness, liens or a
2 third-party interest."

3 Would you agree that the earn
4 program, the way you describe it, has
5 things like claims, liens or third-party
6 interest?

7 MS. BRIER: Objection to form.

8 Outside the scope.

9 But go ahead.

10 THE WITNESS: Yeah, just
11 consistent with the other -- the other
12 items -- I'm sorry, consistent with my
13 other responses.

14 I can't really speak to the
15 legal -- you know, the legal -- the
16 reasons why this was drafted in this
17 way.

18 BY MR. HERMANN:

19 Q. Great.

20 Now I'm going to ask you to turn
21 to the Celsius terms of use Version 8,
22 which is on page 522 of the declaration of
23 Alex Mashinsky.

24 Do you -- I think you said that
25 was cut off, which I'm surprised, because

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1 this is the standards here that we're
2 supposed to be talking about.

3 Do you have that available,
4 page 522?

5 MS. BRIER: Mr. Hermann, what we
6 have -- what he has in front of him is
7 an exhibit that the UCC used that
8 showed exhibit -- changes from
9 Version 5 to Version 6, which are the
10 ones that they asked about, so that's
11 what he has in front of him.

12 MR. HERMANN: Got it. Okay. So
13 I'll just continue to share my screen.

14 BY MR. HERMANN:

15 Q. So just confirming,
16 Mr. Blonstein, you did review the terms of
17 use Version 8 in preparation?

18 A. I did.

19 Q. Okay. So you should at least be
20 familiar with this then, and so I'll just
21 share my screen and zoom it in for you.

22 So we're now on page 522 of the
23 declaration of Alex Mashinsky, and I'm
24 under the section that says, "Beginning
25 April 15, the modification date, the

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1 following terms shall apply for all users
2 in the United States."

3 So it says that any eligible
4 digital asset transferred to your Celsius
5 account on or after the modification date
6 will be initially transferred to our
7 custody wallet as a part of the custody
8 service.

9 In your opinion, should
10 collateral from a paid-off loan or a
11 liquidated loan under this language have
12 been transferred into custody for all
13 United States users?

14 MS. BRIER: Objection to form.

15 Outside the scope.

16 THE WITNESS: The practice at the
17 company was that where -- where
18 possible, when a loan was paid off, we
19 would return the collateral assets to
20 the account from where it originated.

21 So if the collateral originated
22 in an earn account when the loan was
23 paid off, we would return the
24 collateral to the earn account. If the
25 loan collateral originated from the

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1 custody account, if the loan were paid
2 off, it was returned to the custody
3 account.

4 BY MR. HERMANN:

5 Q. What was the contractual basis
6 for that practice?

7 MS. BRIER: Objection to form.

8 THE WITNESS: Yeah, it wasn't my
9 decision. I wasn't involved in the
10 drafting of any of these things. I'm
11 just -- I'm just kind of sharing with
12 you what the practice was. So I can
13 look into that further, or -- but,
14 yeah, I don't have the answer for that.

15 MS. BRIER: And, Mr. Hermann,
16 before your next question, I think
17 someone in the room might have a copy
18 of those pages.

19 MS. CORNELL: Yeah, I have copies
20 of Version A -- [audio distortion].

21 (Comments made off the written
22 record to gather documents.)

23 BY MR. HERMANN:

24 Q. For my next question -- well, let
25 me know when you have it.

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1 MS. CORNELL: Mr. Hermann, do you
2 want to mark this as a separate
3 exhibit, the terms of use 8?

4 MR. HERMANN: Yes, please. Terms
5 of use, 8 and loans terms of service,
6 9.

7 MS. BRIER: Well, we don't have a
8 copy of that one right now, but we do
9 have a copy in front of us of terms of
10 use Version 8 for now.

11 MR. HERMANN: Okay. Yes, please
12 mark that as a separate exhibit. I
13 have -- the page numbers here are
14 consistent with your page numbers --
15 the page numbers on my screen are
16 consistent.

17 (Whereupon, Exhibit 11 is marked
18 for identification.)

19 BY MR. HERMANN:

20 Q. All right. So my next question
21 is about what you call the earn termination
22 events.

23 So, you know, it's -- basically
24 says here that if you use an asset in
25 something other than earn, including the

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1 borrow service, that that would constitute
2 an earn service termination event. That's
3 on page 523.

4 Do you agree that depositing
5 something into -- or that taking out a loan
6 was an earn-- was an earn service
7 termination event?

8 MS. BRIER: Objection to form.

9 Calls for a legal conclusion.

10 THE WITNESS: That's in line with
11 my -- with what I was describing
12 earlier as my understanding of what
13 was, like, practically happening for
14 customers, which was that the main
15 benefit that customers got out of
16 having their assets in the earn program
17 was receiving rewards.

18 And when you initiated a loan,
19 you stopped receiving rewards, so it
20 makes sense -- if that was going to be
21 categorized as an earn service
22 termination event, that makes sense to
23 me.

24 BY MR. HERMANN:

25 Q. Okay. Thank you.

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1 And then, you know, it looks to
2 me -- at first I thought there was an
3 accredited, nonaccredited issue, but,
4 actually, we can go over the language for
5 both accredited or nonaccredited, it looked
6 pretty -- pretty much the same to me. I
7 can make sure you agree.

8 So it basically says for
9 nonaccredited here, that if -- if
10 any eligible digital asset is subject to an
11 earn service termination event, you will
12 not have access to the earn service
13 thereafter.

14 So essentially this means -- does
15 this mean, in your view, that if you pay
16 off a loan or if a loan is liquidated, that
17 the collateral should go into custody for a
18 nonaccredited user in the U.S.?

19 MS. BRIER: Objection.

20 Mr. Hermann, were you summarizing
21 or reading in that question?

22 MR. HERMANN: I was summarizing.

23 MS. BRIER: Object to form.

24 BY MR. HERMANN:

25 Q. Would you like me to restate? I

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1 can restate.

2 If you reside in the United
3 States and are not registered with Celsius
4 as an accredited investor, a nonaccredited
5 U.S. user, any eligible digital asset that
6 is subject to an earn service termination
7 event will not have access to the earn
8 service thereafter. Such eligible digital
9 asset, however, may be used in Celsius's
10 other services subject to the terms herein.

11 Based on this, in your view,
12 should collateral for nonaccredited U.S.
13 users be placed in custody by Celsius upon
14 repayment or liquidation?

15 MS. BRIER: Object to the form.

16 Outside the scope of this motion that
17 relates to earn.

18 But you can answer.

19 THE WITNESS: Yeah, I'm not --
20 I'm not the right person to evaluate
21 the -- like, the -- the legal -- you
22 know, kind of the legal -- the legal
23 question there. On the -- just as a
24 layperson, I would agree with your
25 conclusion.

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1 BY MR. HERMANN:

2 Q. Thank you.

3 And now turning to accredited
4 users on page 524, under terms applicable
5 to accredited to U.S. users, bullet
6 point 2, "If you are an accredited U.S.
7 user and have access to the custody service
8 via your Celsius account, any eligible
9 digital asset transferred to Celsius on or
10 after the modification date will initially
11 be transferred to a custody wallet, but may
12 thereafter be used in the earn service at
13 your discretion."

14 I have two questions for you
15 about this bullet. The first bullet is,
16 when we look here, at least in your
17 understanding, the "have access to custody
18 service," this is referring to custody
19 space versus the cold space, correct?

20 MS. BRIER: Objection to form.

21 Outside the scope. Calls for a legal
22 conclusion.

23 But to the extent you have any
24 knowledge, you can answer.

25 THE WITNESS: Did you say the

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1 custody space versus the cold space?

2 BY MR. HERMANN:

3 Q. No, no. I said --

4 A. All right.

5 Q. If you're -- if -- an
6 accredited -- you know, I'll just skip that
7 question, actually.

8 A. Okay.

9 Q. That's fine. So let me just ask
10 my next question. So if -- you know,
11 again, I read this already in the record,
12 so I don't think I need to read it again.

13 So is your understanding here
14 that, you know, again, the collateral for
15 an accredited user, it would be transferred
16 first -- it should be transferred first to
17 a custody and only if they elect, could
18 they then redeposit it into earn?

19 MS. BRIER: Objection to form.
20 The question's outside the scope, and
21 it's an incomplete hypothetical.

22 But to the extent you have
23 knowledge, you can answer.

24 THE WITNESS: So, yeah, I'm not
25 totally sure I understood there.

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1 But there are two scenarios that
2 I think you wanted to cover. So one is
3 that an accredited U.S. user, when they
4 send in coins, those coins would start
5 out being treated as custody -- as
6 coins held in custody.

7 Then the customer would have the
8 ability to -- you know, would be able
9 to elect to transfer them to the earn
10 service.

11 And then as it relates to loans,
12 if loan was paid off, then the
13 collateral -- then the practice was
14 that the collateral would be returned
15 to the account from where it
16 originated.

17 And, again, I'm just -- I
18 understand what we're reading here does
19 not say that, but that was the
20 practice.

21 BY MR. HERMANN:

22 Q. Understood. So I understood -- I
23 understand the practice. So I'm just going
24 to scroll through here. I think that
25 concludes my questions on this particular

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1 area.

2 Although, I have one final
3 question actually scrolling back, but I'll
4 just do it on the screen in the interest of
5 time here.

6 It really is kind of a question
7 after going through all of this with you.

8 My question here is -- we're back
9 to page 940 of the declaration of Alex
10 Mashinsky.

11 And my question here is, under
12 borrower's representation number 1, where
13 we started this whole line of questioning,
14 do you believe that this representation
15 that "You are the sole owner of all digital
16 assets used in connection with the loan"
17 creates ambiguity for customers who are
18 reading these contracts about the status of
19 earn customer deposits?

20 MS. BRIER: Objection to form.

21 Calls for a legal conclusion.

22 Incomplete document shown on the
23 screen.

24 But to the extent you have
25 knowledge, you can answer the question.

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1 THE WITNESS: Yeah, I mean, it's
2 hard for me to answer that from the
3 perspective of a -- from the
4 perspective of our customers.

5 And, again, like, not
6 understanding -- not knowing firsthand
7 the intent of the legal and regulatory
8 teams that might have worked on this --
9 this agreement, I don't know why it was
10 written this way.

11 BY MR. HERMANN:

12 Q. Okay. Because to me it seems
13 ambiguous.

14 And I think, you know, it's an
15 issue, because Celsius is taking the
16 position that the contracts are clear and
17 unambiguous.

18 Can you see a position that this
19 is actually -- for the entire earn program,
20 even for non-borrowers, that seeing this
21 language could make somebody reading this
22 who's -- let's just say you're mulling a
23 loan.

24 Okay. Let's just say,
25 hypothetically, somebody didn't take a

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1 loan. They're just an earn customer. They
2 just read this contract, okay?

3 As a layperson, if you read
4 number 1 under "Borrower's
5 Representations," would you believe that
6 you owned the coins that were the
7 collateral that were going to
8 hypothetically maybe, maybe not be the
9 collateral?

10 You're just considering taking a
11 loan.

12 MS. BRIER: Okay. Objection to
13 form. That calls for a legal
14 conclusion and is an incomplete
15 hypothetical. And I'm not positive
16 what language you're referring to.

17 But --

18 BY MR. HERMANN:

19 Q. All right. I can restate. I'm
20 fine restating. I'm actually not asking
21 you for a legal conclusion. I'm going to
22 ask you as a layperson.

23 As a layperson, if you read the
24 language, you are the sole owner -- you
25 yourself, just as a person, if you just

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1 read this, you were thinking of taking a
2 loan -- not somebody who took a loan. You
3 just read this. It's a legal document from
4 Celsius.

5 You're just considering taking a
6 loan, and it says, "You are the sole owner
7 of all digital assets used in connection
8 with the loan," if you're an earn
9 depositor, would reading this make you
10 think that you owned those assets, yes or
11 no?

12 MS. BRIER: Objection to form.

13 Calls for a legal conclusion and
14 incomplete hypothetical.

15 THE WITNESS: Yeah. I mean, if I
16 read that text on the page and, you
17 know, didn't know other -- didn't look
18 at any of the other terms of use, if I
19 had questions and I -- you know, and I
20 didn't follow up with someone at
21 Celsius to clarify, I agree, reading
22 that, it says what you're say -- it
23 says what you're saying, so, you know.

24 BY MR. HERMANN:

25 Q. All right. Well, that concludes

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1 that section.

2 I want to see if anyone in the
3 chat -- I haven't actually been -- I just
4 want to do a quick time check here for
5 overall how much we have left.

6 MS. BRIER: Can we please get a
7 time check on the record?

8 THE VIDEOGRAPHER: We have been
9 on the record for six hours and five
10 minutes and counting.

11 MS. BRIER: So we've got 55
12 minutes left.

13 MR. HERMANN: Okay. So then I
14 still have some more questions, and
15 then I'll pass -- I'll pass it off to
16 the next person.

17 BY MR. HERMANN:

18 Q. So my next question is, has
19 Celsius made any adjustments to accounts
20 post-pause or post-petition?

21 An example of this may be
22 deleting bonuses, changing transaction
23 dates or times, changing deposits from
24 pending status to other status or any other
25 changes.

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1 Could you just sort of do a brain
2 dump of all the changes that may have
3 happened, especially -- let's divide it
4 into two questions.

5 So let's say first for -- let's
6 say first for the pause, and then let's do
7 a separate one for -- for post-petition.

8 MS. BRIER: Objection to form.

9 Outside the scope.

10 To the extent you understand the
11 question, you can answer it.

12 THE WITNESS: Yeah, so I think
13 that we've talked about -- sorry,
14 sorry. I'm certain that we've talked
15 about the pending withdrawals.

16 There were -- there were a number
17 of pending withdrawals that we -- that
18 were kind of stuck in limbo, meaning
19 that the -- the withdrawal had not --
20 the withdrawal had been initiated and
21 approved by the customer but not had
22 been fully processed by Celsius at the
23 time of the pause and withdrawals.

24 And so the consequence of that
25 was that customer accounts showed that

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1 the funds had been withdrawn, but
2 the -- the coins had not actually been
3 sent out.

4 So that's an example of where we
5 cleaned that up. And I don't
6 remember -- actually, I believe that
7 that happened in early October where we
8 basically canceled the withdrawal
9 transaction, you know, credited back
10 the customer's account with the funds
11 that had been deducted from their
12 account since they had not actually
13 been withdrawn.

14 So that -- yeah, so that's one
15 example.

16 I believe -- can't remember all
17 of the things that you mentioned, but
18 there were some other instances where
19 bonuses and other kinds of promotional
20 things were reversed.

21 And some of those, you know,
22 could have been -- actually, I know
23 that some of those were related to
24 fraud and other financial crimes that
25 my compliance team was responsible for.

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1 Meaning that we were able to
2 identify customers that were in the
3 process of or were trying to commit
4 fraud, and we were able to -- because
5 of the pause in withdrawals and because
6 of the -- you know, for a variety of
7 reasons, we were able to identify that
8 fraud and stop the payout and
9 withdrawal of rewards that those --
10 that those customers might have
11 otherwise been able to, you know, earn
12 and withdraw.

13 BY MR. HERMANN:

14 Q. All right. Does Celsius have
15 records of the data before it was changed,
16 what changes were made?

17 MS. BRIER: Objection to form.

18 But go ahead.

19 THE WITNESS: Yeah. Absolutely,
20 yeah. Every change that -- every
21 change to a customer's balance should
22 be accounted for in our ledger. So you
23 would see a reversal transaction in --
24 in each customer's -- in each
25 customer's transaction log.

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1 BY MR. HERMANN:

2 Q. Great. And now I have another
3 question. This one's about sort of labels
4 at Celsius.

5 So, you know, there's been
6 some -- I think I've seen in different
7 declarations -- you know, just -- I think
8 withhold was just called a label
9 essentially at one point by Celsius. I
10 don't have it in front of me.

11 You know, custody is sort of
12 treated as if it's something more than a
13 label, although I believe in your
14 declarations -- this is my first question.

15 Custody was never exactly
16 one-to-one matched with any deposits,
17 correct?

18 MS. BRIER: Objection to form.

19 Outside the scope of the issues related
20 to the earn motion.

21 You can answer to the extent you
22 know.

23 THE WITNESS: Yeah, the company
24 always endeavored to have one-to-one
25 matching for customers that had

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1 deposited assets that went to their --
2 you know, that were recorded on our
3 ledger as being part of the custody
4 program with the actual assets held in
5 the custody wallet.

6 Like what was in my declaration,
7 the -- because there was a process
8 where the coins flowed from their
9 deposit -- the personal deposit address
10 or the bridge wallet into main and then
11 were swept to the custody account.

12 You know, the balance in the
13 custody account at any given time may
14 not have exactly corresponded to what a
15 customer -- in the aggregate, what you
16 would get if you summed up all the
17 custody balances according to the
18 ledger.

19 So that was probably a little bit
20 of a word salad. But the idea is the
21 ledger -- if you took a -- if you froze
22 at the moment in time when we performed
23 the reconciliation between the ledger
24 and the custody wallet, there should
25 have been a one-to-one match, and there

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1 certainly was -- there was -- there
2 certainly was at many points in time.

3 Did they fall out of -- did --
4 was there a gap or difference in the
5 value between the custody -- the
6 aggregate custody balance according to
7 the ledger and the balance of coins
8 held in the custody wallet?

9 That would happen, let's say, one
10 microsecond after the reconciliation
11 was done just based on deposits and
12 withdrawal activity from customers.

13 BY MR. HERMANN:

14 Q. Yeah. I mean, I guess my
15 question is in terms of -- so
16 technically -- from a technical -- only a
17 technical perspective -- ignore everything
18 that happened on the backend.

19 When something is labeled
20 "withhold" or "custody" or "suspended" --
21 you know, I understand that there were
22 after-the-fact reconciliations, but -- and
23 that there was a wallet and Fireblocks.

24 But in terms of the just labeling
25 in the app, is there a technical difference

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1 from the way "custody" was a label versus
2 "withhold" or "suspended" or "earn" being a
3 label, or are they just all labeled, and
4 then on the backend you do your thing to
5 reconcile?

6 MS. BRIER: Objection to form.

7 Compound and outside the scope.

8 But you can answer to the extent
9 you know.

10 THE WITNESS: Yeah, I mean, you
11 can say everything single thing in
12 there is a label because of the
13 difference between the ledger and the
14 actual coin movements.

15 So even your balances in earn are
16 a label. Your balances in -- yeah,
17 it's all a label, because those two
18 things were, by design, not tied to
19 each other.

20 That's the difference between --
21 that's generally the difference between
22 centralized service providers and
23 decentralized service providers.

24 BY MR. HERMANN:

25 Q. Makes sense.

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1 And the reason I ask is because,
2 you know, Celsius takes the position that
3 the contract is clear and unambiguous.

4 Would you agree it's the
5 contract, not a label that should
6 dictate -- not a label displayed in the app
7 that should actually dictate where the --
8 where the funds went prepetition?

9 MS. BRIER: Objection to form.

10 BY MR. HERMANN:

11 Q. In other words, if the contract
12 said -- I can restate -- or I'll just stop
13 and now ask a question.

14 If the contract said the coin
15 were to go to custody prepetition, would
16 you agree that the appropriate claim for
17 coins that the contract said were custody
18 coins would be a custody claim, and if the
19 coins were supposed to go to earn, then it
20 would be an earn claim?

21 MS. BRIER: Objection to form.

22 Calls for a legal conclusion and
23 incomplete hypothetical.

24 But you can answer.

25 THE WITNESS: Yeah, I mean -- you

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1 know, I hate to use the same answer
2 again, but it's because I'm -- I wasn't
3 involved in drafting the term, and so I
4 can't speak to the exact reason for why
5 they were drafted this way or why they
6 were written this way.

7 But, yeah, as a general
8 principal, the terms of use should
9 definitely represent, you know -- that
10 should be kind of the ultimate thing
11 that determines the relationship
12 between the customer and the company.

13 MR. HERMANN: All right. I think
14 I'll leave it there. Thank you very
15 much.

16 MS. BRIER: Thanks, Mr. Hermann.
17 Can we please get a time check?
18 And can whoever is the next pro se
19 creditor that is going to be asking
20 questions announce your name on the
21 record.

22 THE VIDEOGRAPHER: All right. So
23 first the time check: Six hours and 15
24 minutes.

25 MS. BRIER: Thank you.

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1 45 minutes left.

2 MR. KHANUJA: Hi, this Kulpreet
3 Khanuja. The name is spelled same as
4 it's in the -- as in the Zoom chat.

5 EXAMINATION

6 BY MR. KHANUJA:

7 Q. All right. Thank you,
8 Mr. Blonstein, for meeting us today. Let
9 me start with my questions.

10 My questions are organized
11 around, you know, your compliance
12 background, so registration and how --

13 (Audio distortion; stenographer
14 asks for clarification.)

15 BY MR. KHANUJA:

16 Q. -- registration and terms of use.
17 THE STENOGRAPHER: Please
18 continue.

19 BY MR. KHANUJA:

20 Q. Okay. Terms of use is --
21 specifically as well and then some around
22 products and terms of use, okay?

23 Mr. Blonstein, was Celsius
24 registered as a money service business --
25 ///

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1 (Audio distortion; stenographer
2 asks for clarification.)

3 BY MR. KHANUJA:

4 Q. -- under FinCen?

5 MS. BRIER: Objection to form.

6 And outside the scope.

7 But go ahead.

8 THE WITNESS: Yeah, I mean, you
9 know -- you get -- there are lots of
10 Celsius entities, and multiple of the
11 Celsius entities including Celsius
12 Network, LLC, which was the -- you
13 know, the main company involved in the
14 terms of use was registered with FinCen
15 as a money services business. So, yes.

16 BY MR. KHANUJA:

17 Q. Okay. And as a money service
18 business, were you required to register
19 with different states in the U.S.
20 individually?

21 MS. BRIER: Same objections.

22 Individuals...

23 Sorry. Can you please repeat
24 your question?

25 ///

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1 BY MR. KHANUJA:

2 Q. As a money service business, were
3 you required to register with different
4 states in the U.S. individually?

5 MS. BRIER: Same objections.

6 THE WITNESS: The -- my
7 understanding of the -- of our
8 obligations are you register -- there's
9 a form that you fill out to register as
10 a money services business.

11 And, you know, that -- by filling
12 out that form and, you know, the
13 control persons signing it, you're
14 signing up to having a bank -- you
15 know, being in compliance with the Bank
16 Secrecy Act.

17 There's a different -- when
18 you're talking about registering with
19 the states, that's a more complex
20 question in terms of -- so, first of
21 all, there's different criteria to
22 determine whether you need to sign
23 up -- I'm sorry -- whether you need to
24 register for, like, a business license
25 or a foreign -- I think it's called

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1 foreign corporation registration with
2 the Secretary of State for each -- for
3 each state.

4 And that's based on a variety of
5 things like whether you have
6 personnel -- if you have, like, an
7 office in the state -- anyway, there's
8 a set of questions that you can answer
9 to determine whether you need to
10 register just as a business in the
11 state.

12 And then if your question is
13 whether we registered with the states
14 for money services, we did not.

15 BY MR. KHANUJA:

16 Q. You did not.

17 As part of your earlier
18 testimony, you mentioned the United States
19 trustee as well as UCC, that you registered
20 under FinCen as an MSB.

21 A. Yes.

22 MS. BRIER: Objection.

23 BY MR. KHANUJA:

24 Q. That's specifically what I'm
25 asking. And you registered with the states

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1 as well, not just the federal level.

2 MS. BRIER: Object to form. And
3 outside the scope.

4 But you can answer.

5 THE WITNESS: Yeah, sorry. I
6 think my -- my last answer wasn't clear
7 enough.

8 So the FinCen, the Financial
9 Crimes Enforcement Network, is a
10 department of the Treasury. That's the
11 federal registration that pretty much
12 every single U.S.-based crypto service
13 provider -- or crypto service
14 provider -- it's actually called like a
15 virtual asset service provider, who is
16 working with U.S.-based customers is
17 required to do or is required to -- is
18 required to register as a money
19 services business. That's a federal
20 registration, so it applies -- you
21 know, it's federal.

22 But you're asking -- I thought
23 that you were asking, and what I'm
24 answering is there are --

25 ///

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1 BY MR. KHANUJA:

2 Q. Individual --

3 A. Yeah, yeah. So there are state
4 money transmitter or state money services
5 business that go by a lot of different
6 names. Sometimes seller of checks. You
7 know, there's a lot of different names for
8 it.

9 But we did not register -- we did
10 not register or acquire license -- those
11 types of state licenses for money
12 transmission at all. So we only did the
13 federal money services business
14 registration with FinCen.

15 Q. Actually, I did some lookup and
16 you were registered as an MSB in
17 Connecticut state where my account was.

18 Anyway, as part of this
19 registration, there is a requirement to
20 submit document called flow of funds
21 structure.

22 Are you aware of such document?

23 MS. BRIER: Object to form.

24 Outside the scope.

25 Go ahead.

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1 THE WITNESS: Sorry.

2 I am.

3 BY MR. KHANUJA:

4 Q. Okay. This document asks, like,
5 the -- basically is asking, like, the
6 business clearly indicates the flow of
7 client forms to each account and identify
8 the owner of the account.

9 Do you agree?

10 MS. BRIER: Objection. Same --

11 BY MR. KHANUJA:

12 Q. I'm asking this because the terms
13 of service governs the ownership of the
14 forms in the account.

15 And Celsius is arguing that, you
16 know, the assets in the account are
17 basically in a customer account -- not
18 customer assets, but rather Celsius assets.

19 So I'm trying to understand how
20 Celsius explain in filings to the
21 regulators and specifically to this
22 document called flow of funds structure.

23 MS. BRIER: Object to form.

24 Outside the scope and foundation.

25 You can answer to the extent you

379

1 know.

2 THE WITNESS: Yeah, I would love
3 to see the document from Connecticut,
4 you know, because I don't see how that
5 could be submitted without my review
6 and approval, if it was during my
7 period during the chief compliance
8 officer.

9 So I don't have any recollection
10 of seeing it, signing it, reviewing it,
11 creating it, anything.

12 So, yeah -- and so it's hard for
13 me to speak to what would have been
14 depicted there.

15 And just for -- just to -- you
16 know, in the effort of transparency, we
17 were in the process of undertaking to
18 apply for many money transmitter --
19 more money transmitter licenses across
20 many states, because we wanted to
21 expand our offering of the swap
22 service, which we did see as money
23 transmission in some states.

24 And we were in the process of
25 developing flow of funds diagrams

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1 and -- and, you know, we had --
2 actually we had signed engagement
3 letters with law firms to help us
4 acquire those licenses and make sure we
5 operated in full compliance.

6 But we just -- we didn't get
7 there. We ran -- you know, were in the
8 process of kicking that off in the late
9 spring 2022.

10 BY MR. KHANUJA:

11 Q. Okay. I have had a few more
12 questions on this. But you already
13 mentioned, like, if such a document was to
14 be prepared and these licenses were to be
15 filed or were to be renewed while you were
16 the chief compliance officer, you would be
17 required to review and sign off on those.

18 Is my understanding correct on
19 what you just mentioned?

20 MS. BRIER: Objection to form.

21 Go ahead.

22 THE WITNESS: So absolutely.

23 There is a system called MLMS, which is
24 the system used for most states in the
25 U.S. for filing this.

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1 I was a control person in an
2 admin and, you know, would have been
3 required to attest to the filing of any
4 forms through that system.

5 So I -- you know, I would be
6 aware of it. I hired the guy that was
7 an expert in that system that managed
8 it. I interfaced with him on a regular
9 basis.

10 So, again, I -- you know, it's
11 possible that this thing in Connecticut
12 that you're referencing happened before
13 I was a chief compliance officer, but
14 I -- I don't remember at all that
15 happening since my time as CCO.

16 BY MR. KHANUJA:

17 Q. Okay. Now, Mr. Blonstein, you
18 mentioned that your focus around compliance
19 activities were more towards the BSA and
20 AML activity.

21 Did I hear correctly?

22 A. That's correct. Yeah, the vast
23 most of the time was on the Bank Secrecy
24 Act and sanctions compliance. In the
25 spring of 2022, I did start to devote some

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1 time towards kicking off a licensing effort
2 around money transmitter licenses, lending
3 licenses, you know, and other -- other
4 things like that. But for the most part,
5 my efforts focused on BSA and sanctions
6 compliance.

7 Q. Yes. But as you mentioned, you
8 know, when you do file these licenses or
9 any kind of reports, you know, to the
10 regulators, you would -- as the chief
11 compliance officer, you would be held
12 accountable for the entire compliance
13 operation of the institution and not
14 just -- not just AML and BSA?

15 MS. BRIER: Objection to form.

16 BY MR. KHANUJA:

17 Q. Is that a fair understanding?

18 MS. BRIER: Object to form.

19 Outside the scope.

20 Go ahead.

21 THE WITNESS: Absolutely. And if
22 I -- you know, we weren't registering
23 as a broker-dealer or a -- you know, a
24 national exchange or ATS or any of the
25 things where that would have been

383

1 outside the scope of my -- you know, my
2 expertise or what I worked on, all the
3 licenses that we contemplated or --
4 contemplated in the future or that --
5 the registration that we were subject
6 to was within the area that I focused
7 on and, you know, where I have some
8 relative expertise.

9 BY MR. KHANUJA:

10 Q. Yes. But you will be responsible
11 for drafting, reviewing, approving and
12 signing off on most of the qualities around
13 compliance which will include the terms of
14 service as well as, you know, compliance
15 with terms of services as well or
16 procedures that are in compliance; am I
17 correct?

18 MS. BRIER: Objection to form.

19 THE WITNESS: Yeah, so as I
20 mentioned -- I mentioned earlier today,
21 and I know it's a long time ago, the --
22 we really -- we had something that --
23 it's not that uncommon in crypto where
24 you have a chief compliance officer
25 where in some companies they might have

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1 supervision over a legal team or
2 regulatory team.

3 That was not the case at Celsius.

4 So our regulatory team and our legal
5 team were responsible for the terms of
6 use, not the compliance function.

7 And, yeah, so I would just leave
8 it at that.

9 BY MR. KHANUJA:

10 Q. Okay. Now, help my memory here.
11 Since when have you been the chief
12 compliance officer?

13 A. September 2021 -- 2021, yep.

14 Q. Okay. So you mentioned that
15 earlier in your testimony, I think, to the
16 UCC counsel, you mentioned that until
17 April 2022, every single customer was earn
18 customer and they sell under your purview
19 as the chief compliance officer.

20 Is that a fair recollection?

21 A. Yeah, I mean, I guess to be more
22 specific, what I -- what I tried to make
23 sure of was that every single new customer
24 that signed up from the day that I became
25 the chief compliance officer, that we were

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1 in full compliance with the Bank Secrecy
2 Act and sanctions regulations.

3 And then, you know, my second
4 priority was to make sure retroactively
5 that any customers -- anyone who became a
6 customer prior to my becoming a CCO, that
7 we also fulfilled our obligation.

8 So I'm just kind of delineating
9 that kind of, you know, there were
10 customers that were on-boarded before I
11 became the CCO that, you know, I wasn't in
12 that role. I didn't have control over that
13 function.

14 So, you know, they are my
15 responsibility. But at the time that they
16 became a customer, I was not in that role.

17 Q. But people who were on-boarded as
18 customers to Celsius since September 2021,
19 they on-boarded using terms of service, and
20 those would fall under your purview as the
21 chief compliance officer?

22 A. Yes.

23 Q. Okay. And you still, you know,
24 maintain that you were not required to
25 review the terms of service of the products

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1 under your purview, which were solely owned
2 at that time?

3 MS. BRIER: Object to form.

4 THE WITNESS: There was --

5 BY MR. KHANUJA:

6 Q. September 2021 through
7 April 2022. Until the launch of custody.

8 A. Yeah, I mean, just again, I'm not
9 saying this is right or wrong -- right? --
10 but just to make sure that you understand
11 how I was looking at this, terms of use are
12 relationship between the company and the
13 customer.

14 There's no -- you know, to my
15 understanding, there was no regulator that
16 enforced terms of use. There's no
17 enforce -- there's no agency that says your
18 terms of use has to include this but can't
19 include that.

20 In contrast, the -- you know, the
21 FinCen and some of the state -- state --
22 state regulators where we had lending
23 licenses, they specifically call out things
24 that we are required to do, you know, that
25 we're obligated to do where officers and

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1 directors, you know, can face jail time,
2 personal fines, things like that.

3 So that's where I focus my
4 efforts, because we had a regulatory team
5 and a legal team with a lot more experience
6 to -- you know, and expertise in drafting
7 terms of use.

8 Q. Would you say these regulatory
9 and legal teams would roll up to you?

10 A. Absolutely not. Yeah, they did
11 not. So the legal team reported in to the
12 general counsel, and the regulatory team
13 was on a day-to-day basis managed by the
14 head of regulatory who reported into Roni.

15 Q. Okay. And the terms of service
16 was one such document, which wasn't really
17 under your purview then. It was more legal
18 and regulatory, you said?

19 A. That's right.

20 Q. Okay. I can skip the next line
21 of some of my questions then.

22 Now, let me ask you this: You
23 responded to the UCC counsel's analogy of a
24 house and car saying when you signed up for
25 Celsius as a customer and you reviewed the

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1 terms of use, you didn't think or make a
2 distinction between a loan and [audio
3 distortion].

4 Did I recollect fine?

5 (Stenographer asks for
6 clarification.)

7 BY MR. KHANUJA:

8 Q. And transfer of ownership.

9 MS. BRIER: Objection to form.

10 Outside the scope.

11 You can answer.

12 THE WITNESS: Yeah, yeah. So,
13 like, just in my capacity as a -- or in
14 my -- just as a customer, that wasn't
15 material to me, because I'm not an
16 attorney.

17 I'm not -- it was -- they're
18 either -- either I have the keys or
19 somebody else has the keys was how I
20 looked at it; so...

21 BY MR. KHANUJA:

22 Q. Okay. Now, when you became the
23 chief compliance officer, you still didn't
24 review the terms of use especially from a
25 customer protection standpoint and found no

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1 conflicting statements in terms of use?

2 MS. BRIER: Object to form.

3 THE WITNESS: Yeah, just kind of,
4 like I said -- or like I've said today,
5 just to give you an idea of the scope,
6 when I joined -- when I became the
7 chief compliance officer in the months
8 that followed, I tripled the size of
9 the team. We were onboarding, you
10 know, between 10-, 30,000 customers a
11 week. We had hundreds of thousands of
12 transaction a week.

13 You know, there was a lot of work
14 to be done on the AML and sanctions
15 compliance side. I also had another
16 job, head of innovation. We were
17 launching multiple new products.

18 So I had a lot on my plate. And
19 when I had -- you know, when we have a
20 regulatory team and a legal team with a
21 bunch of very experienced, you know,
22 professionals, I had to just kind of
23 choose what I focused on, and that's
24 what I did. And it wasn't the terms of
25 use.

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1 BY MR. KHANUJA:

2 Q. Okay. So I won't belabor on that
3 point more. Let's me ask you just one last
4 question on that.

5 But then, you know, you weren't
6 able to make a distinction between a loan
7 and transfer of ownership as you mentioned.
8 Now, if that is unclear and unambiguous,
9 you know -- or rather, I'm sorry.

10 If the distinction is not clear
11 and unambiguous to a chief compliance
12 officer of a regulated financial
13 instruction -- I am sorry, not regulated --
14 registered financial institution as an MSB,
15 do you think it will be ambiguous to
16 unaccredited investor or unsophisticated
17 investors or even sophisticated investor
18 but who are not as legal savvy as the chief
19 compliance officer?

20 MS. BRIER: Objection to form.

21 Misstates testimony and calls for a
22 legal conclusion.

23 THE WITNESS: Yeah. You know,
24 it's hard -- it's hard to answer that
25 on behalf of other people.

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1 I -- obviously, I understand your
2 point. I'm -- I follow the -- you
3 know, the comments from our customers
4 and stuff like that. I understand the
5 frustrations. I understand how people
6 feel about it.

7 But, yeah, just commenting on how
8 people may have interpreted it, I'm not
9 the right person to answer that.

10 BY MR. KHANUJA:

11 Q. Would you know the circumstances
12 around the previous CCO leaving?

13 MS. BRIER: Objection to form.
14 Outside the scope.

15 You can answer, if you know.

16 THE WITNESS: I don't know.

17 Yeah.

18 BY MR. KHANUJA:

19 Q. Do you know if the previous CCO
20 reviewed and signed off on the terms of
21 service?

22 MS. BRIER: Same objections and
23 foundation.

24 THE WITNESS: I don't know
25 firsthand. Yeah, I don't know

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1 firsthand.

2 MS. BRIER: Before your next
3 question --

4 BY MR. KHANUJA:

5 Q. Do you know --

6 MS. BRIER: Sorry. Before your
7 next question, I just want to give a
8 time update that by our watch, we are
9 around 25 minutes left on the clock.

10 I just wanted to put that on the
11 record.

12 MR. KHANUJA: I tried to be quick
13 and fair to other pro se questioners.

14 BY MR. KHANUJA:

15 Q. I am sorry. Do you know if that
16 person ever objected to terms and certain
17 clauses which are ambiguous?

18 MS. BRIER: Object to form.

19 THE WITNESS: Yeah, I wouldn't be
20 able to speak to that. I mean, you
21 know, this is -- you know, public
22 record, but the -- the person who was
23 the chief compliance officer before --
24 earlier in the company's history was
25 also the general counsel.

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1 So it makes sense to me that that
2 person would have been involved in
3 drafting the terms of use and would
4 have reviewed it and approved it.

5 BY MR. KHANUJA:

6 Q. Okay. Now, last question on
7 this.

8 Are you aware of customers being
9 solicited to become accredited and investor
10 certify?

11 MS. BRIER: Objection to form.

12 Outside the scope.

13 You can answer, if you know.

14 THE WITNESS: Yeah, certainly we
15 were -- the company, you know, starting
16 in April where the -- you know, there
17 were significant changes to the earn
18 program and people who were not
19 accredited insurers were no longer
20 eligible to use the earn service, you
21 know, we had tens of thousands of
22 customers reaching out interested in
23 figuring out a way that they could
24 continue to participate in the earn
25 program.

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1 And so, you know, there were
2 numerous efforts by the company to
3 educate customers about how they could
4 become accredited.

5 BY MR. KHANUJA:

6 Q. Okay. And was there direct
7 solicitation from Celsius, initiated by
8 Celsius, even when the customers didn't
9 reach out --

10 MS. BRIER: Objection to form.

11 BY MR. KHANUJA:

12 Q. -- by phone or emails, including
13 providing URLs of services, data -- the
14 customers can use to become self -- you
15 know, accredited, certified?

16 MS. BRIER: Apologies. I didn't
17 realize your question was still going.

18 Objection to form.

19 THE WITNESS: I believe that did
20 take place, yes.

21 BY MR. KHANUJA:

22 Q. Now, moving on. You responded
23 to -- actually may be a difficult question.
24 Sorry.

25 You mentioned you joined in the

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1 spring 2020; is that correct?

2 A. I became a customer --

3 Q. I'm sorry. You joined the
4 Celsius platform as a customer in spring
5 2020?

6 A. That's correct.

7 Q. And you mentioned when you
8 joined, the terms of service was clear to
9 you that you would relinquish ownership of
10 your assets in exchange for a divorce?

11 MS. BRIER: Object to form.

12 THE WITNESS: Yeah, I mean, just
13 to say it in my own words, I remember
14 reviewing it and being aware of it and
15 making the decision anyway to send my
16 assets to the company.

17 BY MR. KHANUJA:

18 Q. Okay. I was reviewing the
19 previous versions of terms of use. Until
20 September 2020 -- 30th of September 2020,
21 the terms of use do not mention transfer of
22 ownership rights at all.

23 So until then, terms of service
24 Version 4 would be applicable. In
25 Version 4, what it mentions is that Celsius

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1 will hold our assets -- our customer's
2 assets in Celsius's name.

3 You can refer the terms of use
4 Version 4, paragraph 30 or I can pull it
5 from the declaration of Alex Mashinsky with
6 the terms of service document.

7 MS. BRIER: Objection to form.

8 BY MR. KHANUJA:

9 Q. So would you like me to bring it
10 up? In the interest of time, I'm not
11 bringing that up on the screen.

12 MS. BRIER: Objection to form.

13 And I think, you know, if you
14 want to ask a question about the
15 language, you can ask a question about
16 the language.

17 But answer to the best of your
18 ability, if you can, without it in
19 front of you.

20 THE WITNESS: Yeah, I mean,
21 the -- like, what you described that it
22 would be held in Celsius's name, yeah,
23 different words might have been used.

24 But from my perspective, I understood
25 it. I mean, that's kind of --

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1 BY MR. KHANUJA:

2 Q. The next version -- the next
3 version, Version 5 and 6, they specifically
4 mention the transfer of ownership rights
5 and all. But prior to that, it was clear.

6 So I'm just trying to understand
7 what made you so sure that you were
8 relinquishing your assets. I had an
9 account with Celsius since 2019, and I was
10 under the prior versions of terms of use,
11 and to me it was always clear these are my
12 assets.

13 MS. BRIER: Objection to form.

14 THE WITNESS: Yeah. I --

15 BY MR. KHANUJA:

16 Q. So do you know -- I'm sorry. I
17 interrupted. Please continue.

18 A. I was just going to say, you
19 know, without the -- without it in front of
20 me, I can't point to the exact -- like,
21 I'm -- I'm just conveying that, at that
22 time, as a customer.

23 Q. It's in the declaration of Alex
24 Mashinsky. It was under the terms of use.
25 I think the document No. 393. But I'm just

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1 being fair to others, you know, who want to
2 ask questions. So we don't want to pull
3 that up yet.

4 A. Okay.

5 Q. Now, between when you became a
6 Celsius customer and then an employee,
7 would you say the earn product changed
8 materially --

9 MS. BRIER: Objection to form.

10 BY MR. KHANUJA:

11 Q. -- or change at all?

12 MS. BRIER: Same objection.

13 THE WITNESS: I wasn't managing
14 the earn product. I wasn't -- I wasn't
15 firsthand involved in the deployment
16 activities related to the earn product.

17 You know, I didn't set the
18 interest rates. You know, so I'm not
19 the best person to answer what the
20 material changes were to the earn
21 product.

22 BY MR. KHANUJA:

23 Q. Okay. Let me rephrase my
24 question.

25 What prompted the change in terms

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1 of service if -- if the -- if the earn
2 product was more or less the same -- you
3 know, at least to the customers, there was
4 no change in the -- you know, in the
5 experience around that particular product?

6 MS. BRIER: Objection to form.

7 THE WITNESS: Yeah, you know, for
8 most of my career, I've worked at
9 startups.

10 And when terms of use start for a
11 brand-new company, they're usually,
12 like -- you know, if it's a well-funded
13 startup, then they have extensive terms
14 of use and terms of service. If it's
15 kind of a scrappy startup, then they
16 are going to be a little bit more
17 sparse.

18 So it makes sense that those
19 things would evolve over time to become
20 more comprehensive. You know, so it's
21 not -- it's not a surprise to me that
22 the terms of use maybe got more
23 detailed, you know, had more review and
24 input from -- you know, from counsel
25 with -- you know, different or more

400

1 experience.

2 BY MR. KHANUJA:

3 Q. Okay. Okay. Would you say
4 it's -- you know, the terms of service
5 change wherein initially it's mentioned
6 holding customer's assets and then
7 saying -- granting Celsius the rights to
8 ownership -- from a holding asset to
9 granting rights to ownership, would you say
10 it's a material change in terms of...

11 MS. BRIER: Objection to form.

12 BY MR. KHANUJA:

13 Q. And you can refer to the document
14 again with regards to exact language.

15 A. Yeah, without -- without having
16 the documents in front of me, and I
17 don't -- I'm just not -- not fluent enough
18 in those documents to recall it from memory
19 to comment on that.

20 Q. All right. Again, I would really
21 want to go into it, but I want to be fair
22 to others as well. I'll move on.

23 You did mention that the terms of
24 use changes prior to Version 6 was notified
25 to customers in email and in-app

401

1 notification. This was, I think, to a UCC
2 response.

3 Did I hear that correctly?

4 MS. BRIER: Objection to form.

5 Asked and answered.

6 THE WITNESS: Yes. Yes, that's
7 in the declaration.

8 BY MR. KHANUJA:

9 Q. Okay. Actually, would you be
10 able to ask your team or yourself, provide
11 evidence of that? Because I've argued in
12 my motion that no such notification emails
13 were sent between Version 1 through 5.

14 MS. BRIER: Object to form.

15 THE WITNESS: Yeah, I can confer
16 with the legal advisors about that.

17 Yeah, I mean, from the research that I
18 did, you know, talking to the staff
19 that was responsible for terms of use,
20 this was my understanding.

21 We also have the automated system
22 that tracked, you know, acceptance of
23 the terms of use.

24 So, yeah, that's in line with --
25 what was in the declaration is in line

402

1 with my understanding. Like, even, you
2 know, the fact that we're able to
3 report on the percentages of customers
4 that accepted or that -- I'm sorry, the
5 version of the terms of use that were
6 in effect when customers registered, to
7 me -- you know, I can tell you, I don't
8 think that the company is fabricating
9 this data.

10 So that means that this -- the
11 system was in place to track that. And
12 so if it's being tracked, that means
13 that it happened.

14 BY MR. KHANUJA:

15 Q. I can tell you that Version 6 we
16 all received notification emails, but until
17 Version 5, all the changes that were made,
18 those were not communicated in any form.
19 Those happened in background.

20 A. Okay.

21 MS. BRIER: Objection to form.
22 Is there a question related to that
23 statement?

24 BY MR. KHANUJA:

25 Q. Yeah. That was a statement --

403

1 yeah, that was a statement. We can move
2 on.

3 MS. BRIER: And just as a time
4 check -- sorry. Not to interrupt
5 you -- I am sorry, I just want to make
6 sure the record is clear, there's 15
7 minutes left -- maybe 14 now.

8 THE VIDEOGRAPHER: 14.

9 MS. BRIER: Thank you.

10 MR. KHANUJA: I'll take a couple.

11 MR. KIESER: We might need more
12 than 15 minutes, by the way.

13 MS. BRIER: No, there's 14
14 minutes left.

15 MR. FRISHBERG: We --
16 (Audio distortion due to multiple
17 speakers.)

18 THE STENOGRAPHER: I can't see
19 who is speaking.

20 MR. FRISHBERG: Sorry. This is
21 Daniel Frishberg, D-a-n-i-e-l;
22 Frishberg, F-r-i-s-h-b-e-r-g.

23 I still need a chance to depose
24 him. And I believe Victor does as
25 well.

404

1 MS. BRIER: I mean, there's seven
2 hours. And the subpoena in this case
3 was issued under the Federal Rules of
4 Bankruptcy Procedure, which imposed
5 discovery limits contained in the
6 Federal Rules of Civil Procedure.

7 One of those limits imposes a
8 hard time limit of one day of seven
9 hours of on-the-record questioning, and
10 that's -- we're going to be at seven
11 hours.

12 (Audio distortion due to multiple
13 speakers.)

14 THE STENOGRAPHER: That wasn't
15 heard for the record.

16 MR. FRISHBERG: Oh, on the
17 record. We can issue another subpoena,
18 if necessary.

19 MS. BRIER: Okay. And we'll move
20 to quash, if that happens.

21 MR. FRISHBERG: Okay.

22 MR. KHANUJA: Okay. I'll take a
23 quick two minutes, and then, Daniel and
24 Greg, you can go next.

25 ///

405

1 BY MR. KHANUJA:

2 Q. Now, as the head of innovation
3 and a person with a products background,
4 can you explain the key difference between
5 custody and earn product?

6 A. Yeah, I think it's been described
7 in the -- in my custody declaration, and I
8 would say from the -- the innovation --
9 from my capacity as the head of
10 innovation -- and this was in my
11 testimony -- or my answers to the
12 examiner -- we looked at the custody
13 account as a way -- as kind of the new kind
14 of -- the new kind of starting point for
15 our customers to access a variety of other
16 services, you know, which included earn,
17 but also swaps, also credit card, also the
18 future advisory product that we were
19 planning to develop. So that's how I
20 looked at custody from the innovation
21 perspective.

22 Earn was an existing product.
23 And then, yeah...

24 Q. What -- I'm sorry. I want to
25 move quick.

406

1 Was Celsius registered as a
2 custodian to provide custody service?

3 MS. BRIER: Objection to form.

4 Outside the scope.

5 THE WITNESS: Celsius was
6 registered as a money services
7 business, and so, you know, the -- in
8 terms of what we were -- what licenses
9 and registrations we needed, I relied
10 on advice from counsel.

11 BY MR. KHANUJA:

12 Q. Okay. Now, did you transfer your
13 own assets from earn to custody or even
14 outside Celsius after 2022?

15 MS. BRIER: Same objections.

16 You can answer.

17 THE WITNESS: Yeah. I didn't
18 withdraw a penny from the platform. I
19 put, you know, a large portion of my
20 crypto into Celsius. So did some
21 friends and family.

22 No one withdrew anything. The
23 only time I moved something from earn
24 into custody was to pay off a loan.

25 And by the way, I took that loan

407

1 to test the loan functionality when
2 loans became available in California.
3 And later my loan was liquidated in the
4 pause. So, you know, I suffered
5 liquidation along with many other
6 customers.

7 So there's that.

8 MR. KHANUJA: Thank you. Thank
9 you for your time. I'll cede -- you
10 know, cede to Daniel or Greg.

11 MR. KIESER: Hi. This is Greg
12 Kieser. I am on the record. My name
13 is -- as spelled on the Zoom chat.

14 Can everybody hear me?

15 THE WITNESS: Yes.

16 EXAMINATION

17 BY MR. KIESER:

18 Q. Great. So, Oren, thanks for
19 today. Just some context. I'm a loan
20 holder. I have 13 loans -- I had 13 loans
21 in total, three of which were
22 liquidated [audio distortion].

23 THE STENOGRAPHER: Excuse me,
24 Mr. Kieser. You need to slow down so
25 you can be understood for the record.

1 BY MR. KIESER:

2 Q. Okay. I had 13 loans, three of
3 which were liquidated during the -- June of
4 this year, and the proceeds of the
5 liquidated after the loan were paid off
6 went into the earn program.

7 So -- and I'm also on a committee
8 of folks who had liquidated loans, so there
9 are a couple hundred there, and also on the
10 committee of loan holders, which is a
11 thousand or more people.

12 So all of my questions are
13 concerning loan liquidation essentially.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1

2 Q. Okay. Are you -- so as your role
3 as chief compliance officer were you
4 involved in developing and implementing the
5 policies and procedures surrounding
6 liquidation events?

7 MS. BRIER: Object to form.

8 Outside the scope.

9 You can answer.

10 THE WITNESS: No, those
11 procedures were in place at the time I
12 became the chief compliance officer.

13 And I would have gotten to that, but I
14 did not -- I did not in my --

15 BY MR. KIESER:

16 Q. Okay.

17 A. -- yeah, in my time.

18 Q. Okay. Is it your understanding
19 that the majority of the loans that were
20 initiated through the app had a
21 loan-to-value ratio of 80 percent as the
22 liquidation point, the point at which they
23 would be liquidated?

24 MS. BRIER: Objection to form.

25 Outside the scope.

410

1 You can answer.

2 THE WITNESS: That's correct.

3 BY MR. KIESER:

4 Q. Okay. Also were you aware during
5 mid-May and mid-June, there were two
6 periods where the price of Ethereum and
7 Bitcoin dropped precipitously making a
8 number of loans -- probably a large number
9 of loans go past that LTV value and,
10 therefore, be subject to liquidation?

11 MS. BRIER: Same objections.

12 THE WITNESS: Yes.

13 BY MR. KIESER:

14 Q. Okay. So can you talk about the
15 process that was in place for liquidating
16 loans?

17 Did it happen automatically when
18 a loan hit 80 percent, or was there a staff
19 member who would then look at the system or
20 would be charged to look at the system and
21 say, okay, this loan is 80 percent, let's
22 liquidate it, and they had to click on it
23 or do some manual process to liquidate the
24 loan?

25 MS. BRIER: Objection to form.

411

1 Outside the scope.

2 You can answer.

3 THE WITNESS: Yes. I can tell
4 you that automated systems were in
5 development and were basically on the
6 verge of deployment -- you know, it was
7 right on the cusp of being deployed,
8 but the liquidations were a very -- you
9 know, a very manual process that were,
10 you know, conducted by the loans -- the
11 retail loans team.

12 BY MR. KIESER:

13 Q. And would you say that that
14 process was the same no matter what? If
15 you hit 80 percent, your loan was
16 liquidated, or was it sort of some went 80,
17 81, some didn't?

18 So, you know -- like, what --
19 what is the consistency across the
20 portfolio of loans that were liquidated
21 when they hit 80 percent?

22 MS. BRIER: Same objections.

23 THE WITNESS: Yeah, because it
24 was a manual process. And like you
25 said, there were times where there

412

1 was -- you know, incredible volatility
2 in the prices of the underlying assets.

3 I'm sure that there -- there -- I
4 know for a fact there were times where
5 the LTV went above that 80 percent --
6 you know, went above that 80 percent
7 ratio just because of the volume of
8 loans that -- that were in play and
9 the -- and just the -- how quickly the
10 prices were changing.

11 BY MR. KIESER:

12 Q. Okay. And are you aware that
13 there were several versions of the loan
14 agreement that indicated that a loan would
15 be liquidated down to a 65 percent LTV, in
16 other words, not liquidated entirely, but
17 liquidated down to just -- I guess a less
18 risky LTV?

19 Were you aware that those loans
20 agreements exist?

21 MS. BRIER: Objection to form.

22 Outside the scope.

23 You can answer, if you know.

24 THE WITNESS: Yeah, I was not as
25 fluent with all the versions of the

413

1 loan agreement.

2 BY MR. KIESER:

3 Q. Okay. I had a couple of loans
4 that had that context, by the way.

5 So were you also aware that the
6 on-screen prompt for liquidation of loans,
7 in other words, what the app told somebody
8 would happen when their 80 percent LTV was
9 reached said, quote, "We will sell some of
10 your collateral to cover the margin,"
11 unquote?

12 Were you aware of that on-screen
13 prompt?

14 MS. BRIER: Object to form.

15 Outside the scope.

16 THE WITNESS: I don't -- yeah,
17 that -- I mean, just in preparation for
18 this deposition, it wasn't -- I
19 haven't, like, refamiliarized myself
20 with that.

21 Yeah, and -- and like I've said,
22 this -- this was -- this was an area I
23 was spending an increasing amount of
24 time on, the loans.

25 You know, because we, relatively

414

1 recent in the company's history,
2 started to get lending licenses, and we
3 were applying for new lending licenses.
4 But I'm not -- generally, I'm just not
5 as -- as fluent in these agreements.

6 MS. BRIER: All right. Folks,
7 just as an update, we're -- we're
8 little a under five minutes right now.

9 MR. KIESER: Okay. I'll be done
10 in two minutes.

11 BY MR. KIESER:

12 Q. Were you -- were you aware
13 that -- you previously answered that when
14 something was liquidated or paid off -- a
15 loan was liquidated or paid off, that --
16 those funds went back to where they
17 originated from.

18 Based on that, were you aware
19 that in order to open a loan, many -- I
20 did or many people did, had to send money
21 to the earn account in order for it then to
22 be applied to the loan to be open?

23 In other words, that option to
24 put it into custody before going into a
25 loan was not even there; therefore, the

415

1 fact that it goes back to where it
2 originated from maybe isn't the best idea?

3 So were you aware that's how
4 loans were originated?

5 MS. BRIER: Objection to form.

6 Outside the scope.

7 THE WITNESS: Yeah, I know you're
8 here to explain that -- and I would
9 just say that there were a bunch of
10 corner cases -- and I did say this in
11 at least one of my answers, that --
12 that the fact that assets were returned
13 to the account from where they
14 originated -- there were some corner
15 cases based on what we called
16 subcustody states. There may have been
17 other corner cases.

18 So I know it wasn't 100 percent
19 of the time the practice of the
20 company. And in some cases, it
21 couldn't be, because custody was not
22 available in all states.

23 BY MR. KIESER:

24 Q. Okay.

25 A. So, for example, if somebody had

416

1 taken a loan, for example, in Louisiana
2 where we couldn't offer a custody account,
3 you know, we would not be able to return
4 assets to custody.

5 Q. Okay. Thank you. One last
6 question.

7 I'm sure you understood that
8 during this -- after the pause, there was
9 the public perception that -- that Celsius
10 was an insolvent company and, therefore,
11 loan holders who faced a liquidation event
12 were faced with the challenge of sending
13 good money after bad or sending money into
14 Celsius to fortify a loan from liquidation
15 with the risk that Celsius would then go
16 under and all of their money would go away.

17 So they were essentially faced
18 with an almost impossible catch-22 with
19 regards to their life savings and their
20 money.

21 Are you aware of that kind of
22 situation --

23 MS. BRIER: Objection to the
24 form.

25 ///

417

1 BY MR. KIESER:

2 Q. -- that that was apparent?

3 MS. BRIER: And outside the
4 scope.

5 You can answer.

6 THE WITNESS: Yeah, yes, yeah.

7 Yep, I understand that situation.

8 BY MR. KIESER:

9 Q. Were there any discussions at
10 Celsius with regards to this particular
11 thing?

12 In other words, you know, maybe
13 we should not take the -- maybe we should
14 not do these liquidations because of that
15 particular concern?

16 MS. BRIER: Objection to form.

17 BY MR. KIESER:

18 Q. Did that come into the decision
19 making?

20 MS. BRIER: I apologize. I
21 didn't mean to cut you off.

22 Objection to form. Outside the
23 scope.

24 THE WITNESS: Yeah. I mean --
25 and those discussions were with

418

1 counsel.

2 MR. KIESER: Okay. So those
3 decisions did happen.

4 Those are all the questions I
5 had. I'll hand it off to Daniel.

6 MS. BRIER: Can we please get a
7 time check?

8 MR. FRISHBERG: Thank you.

9 MS. BRIER: Can we please get a
10 time check on the record?

11 (Simultaneous unreportable
12 crosstalk occurs among parties.)

13 MR. FRISHBERG: Thank you.

14 THE VIDEOGRAPHER: Yes. So it
15 is -- we are at seven hours exactly.

16 MS. BRIER: All right. So,
17 folks, we're --

18 MR. FRISHBERG: I apologize.

19 MS. BRIER: Sorry?

20 MR. FRISHBERG: Can we get it
21 extended?

22 I believe -- let's see. We're
23 allowed to get it extended -- let me
24 see the case law.

25 The rules --

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1 (Audio distortion; stenographer
2 asks for clarification.)

3 MR. FRISHBERG: Thank you.

4 Could we get the time limit
5 extended slightly? Kirkland did
6 promise in the document that responded
7 to my objection that I would get a
8 chance to depose the declarants as well
9 as the Federal Rules allow it to be
10 extended.

11 MS. BRIER: Mr. Frishberg, as I
12 said earlier, the subpoena in the case
13 was issued under the Federal Rules of
14 Bankruptcy Procedure, which limit this
15 to seven hours.

16 The UCC, in our understanding,
17 agreed to provide two hours to the pro
18 se creditors, and we provided more than
19 that to the pro se creditors over the
20 course of the past two days.

21 We understand that you have
22 broader questions. But, you know, over
23 the course of the past few days, we've
24 allowed questioning far beyond the
25 scope of the motion at issue, so we're

420

1 not going to extend the time for
2 Mr. Blonstein's deposition.

3 MR. FRISHBERG: Thank you. Can
4 you please contact the judge? I
5 believe he can order it extended.

6 MS. BRIER: If you want to, you
7 can file a motion. But we're not going
8 to allow more time at this point.

9 MR. FRISHBERG: Will do. I will
10 be filing a motion. Thank you.

11 THE VIDEOGRAPHER: All right. So
12 the time is currently 7:08 --

13 MR. HERMANN: I would just like
14 to formally object on the record and
15 note that will I will be filing in my
16 objections tomorrow that we were not
17 able to complete the questions.

18 (Simultaneous unreportable
19 crosstalk occurs among parties.)

20 MR. HERMANN: I believe the
21 timeline is unworkable, and I will
22 continue to object to the scheduling
23 order.

24 MR. WOFFORD: Immanuel and
25 Daniel -- this is Keith Wofford for the

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1 Committee. Is there a particular
2 number of minutes that the pro ses
3 could limit themselves to?

4 Because I think part of the
5 issue, what Debtor's counsel is saying,
6 setting aside all of the reservation of
7 rights under the rules, is that this
8 could be apparently open-ended and it's
9 getting pretty late, meaning if the pro
10 ses collectively could say definitively
11 it was 15 or 20 or 5 or whatever number
12 of minutes that might, although
13 obviously --

14 (Audio distortion; stenographer
15 asks for clarification.)

16 (Simultaneous unreportable
17 crosstalk occurs among parties.)

18 (Stenographer requests one
19 speaker at a time.)

20 MR. WOFFORD: So for the
21 record -- sorry about that for the
22 court reporter.

23 Keith Wofford, for the Committee.
24 Merely asking the pro ses if there is
25 some proposed responsible limitation of

422

1 time that might be proposed to the
2 Debtors so as to avoid the need for
3 further satellite litigation on the
4 issue without prejudice to the Debtors'
5 rights, of course, to insist that they
6 will not continue this any further.

7 That was the question I proposed
8 to Mr. Frishberg and Mr. Hermann.

9 Apologies.

10 MR. FRISHBERG: Thank you. I am
11 the last pro se. I think 20 minutes
12 should be plenty assuming everything
13 works out the way I expect it to.

14 MS. CORNELL: What if we limit
15 the scope to just the motion; I mean,
16 if we truly limit the scope of the
17 questions?

18 MR. McCARRICK: This is T.J.
19 McCarrick from Kirkland & Ellis.

20 If we agree to extend this 20
21 minutes, I want on-the-record
22 statements from every pro se creditor
23 that you're not going to seek
24 additional discovery or depositions
25 from any of our three declarants in

423

1 connection with this motion.

2 Are you willing to make that
3 representation?

4 MR. FRISHBERG: I am. I can --
5 I'll say on the record that I will not
6 be seeking any extra discovery
7 depositions, et cetera, of these
8 specific three declarants for this
9 specific motion.

10 Of course, I reserve all other
11 rights, et cetera, et cetera.

12 MR. McCARRICK: Okay. No,
13 we're -- I don't think we're going to
14 agree to that.

15 If you need to, you know, file a
16 motion for more time -- I understand
17 Mr. Hermann also believes he needs more
18 time. You can file your motion.

19 Thank you, guys.

20 MR. FRISHBERG: Thank you.

21 THE VIDEOGRAPHER: All right. So
22 the time is currently 7:04 p.m. This
23 concludes Media Unit No. 4 of today's
24 testimony.

25 And we are officially off the

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1 record for today's day of testimony.

2 (Time noted: 7:04 p.m.)

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1 REPORTER CERTIFICATE

2 I, the undersigned, do hereby certify:

3 That OREN BLONSTEIN was by me duly sworn
4 in the within-entitled cause; that said
5 deposition was taken at the time and place
6 herein named; and that the deposition is a
7 true record of the witness's testimony as
8 reported by me, a disinterested person, and
9 was thereafter transcribed.

10 I further certify that I am not
11 interested in the outcome of the said
12 action, nor connected with, nor related to
13 any of the parties in said action, nor to
14 their respective counsel.

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 23rd day of November, 2022.

17 Signature: Requested Waived Not Requested

18
19
20


21 JESSICA R. WAACK

22 Registered Diplomate Reporter

23 Certified Realtime Reporter

24 California Certified Realtime Reporter

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CCR-WA (No. 21007264), CSR-CA (No. 14420)

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1 INSTRUCTIONS TO WITNESS

2
3 Please read your deposition over
4 carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it.

10 You are signing same subject to
11 the changes you have noted on the errata
12 sheet, which will be attached to your
13 deposition.

14 It is imperative that you return
15 the original errata sheet to the deposing
16 attorney within thirty (30) days of
17 receipt of the deposition transcript by
18 you. If you fail to do so, the deposition
19 transcript may be deemed to be accurate
20 and may be used in court.

21
22
23
24
25

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1 DECLARATION UNDER PENALTY OF PERJURY

2 IN RE: CELSIUS NETWORK

3 Date of Deposition: November 22, 2022

4

5

6 I, OREN BLONSTEIN, hereby
7 certify under penalty of perjury under the
8 laws of the State of _____ that
9 the foregoing is true and correct.

10

11 Executed this _____ day of _____, 2022,
12 at _____.

13

14

15

16 _____
17 OREN BLONSTEIN

18

19 SUBSCRIBED AND SWORN BEFORE ME
THIS ____ DAY OF _____, 20

20

21 _____
NOTARY PUBLIC

22

23 MY COMMISSION EXPIRES: _____

24

25

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1 ERRATA SHEET

2 IN RE: CELSIUS NETWORK

3 WITNESS: OREN BLONSTEIN

4 Date of Deposition: November 22, 2022

5

6 Reason Codes: 1. Clarify the record
7 2. Conform to the facts
7 3. Correct transcription errors

8

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24

25

OREN BLONSTEIN

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